

Hawaii Coastal Zone Management Program

MANAGING HAWAII'S COAST

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This document was prepared for the
State of Hawaii Department of Planning and Economic Development

by

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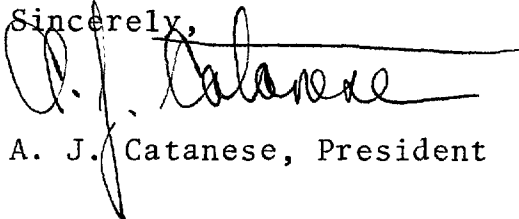
Mr. Hideto Kono, Director
Department of Planning and Economic Development
State of Hawaii
Honolulu, Hawaii 96804

Dear Mr. Kono:

This report which we have entitled Managing Hawaii's Coast represents our professional analysis and judgement of the problems and potentials for managing Hawaii's Coastal Zone Program. Our major recommendation is to designate DPED as the permanent lead agency and create a CZM Division within it. We also describe several elements of the organizational and management program as well as review the public awareness and involvement program.

We hope this information will be useful for the Department as it seeks a better quality of life and environment for Hawaii's people.

Sincerely,



A. J. Catanese, President

AJC/me

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Background

This second-year report is submitted in partial fulfillment of Agreement 5611 of the Hawaii Department of Planning and Economic Development pertaining to the Hawaii Coastal Zone Management Program as authorized by Section 305 of the National Coastal Zone Management Act of 1972 (P.L. 92-583). Under terms of the grant from the National Oceanic and Atmospheric Administration of the United States Department of Commerce through Coastal Zone Management Grant Document No. 04-5-158-50013, the State of Hawaii is formulating its provisions of the National Coastal Zone Management Act of 1972, the Governor of Hawaii designated the Department of Planning and Economic Development as state planning liaison agency (lead agency) in 1973. In addition to the Governor's designation, the 1973 Hawaii Legislature enacted Act 164 which mandated the Department of Planning and Economic Development to prepare a coastal zone management program in accordance with the National Coastal Zone Management Act of 1972.

This report is related primarily to element 920.16, Section 305, National Coastal Zone Management Act of 1972. This section requires that the State include within its management program a description of the organizational structure proposed to implement the management program. This shall include the responsibilities and interrelationships of local, state, and federal agencies in the management program. In addition, this element contains a public awareness and involvement component which is intended to allow public participation in the planning process as well and input for management.

To a major degree, this element, involving organizational structure and public participation, is highly interrelated to several other work elements of the Coastal Zone Management Program. Element 920.11, dealing with the boundaries of the coastal zone, is important in that it establishes the basic physical parameters in which organization and participation must relate. Element 920.12, in which geographic areas of particular concern are addressed, is interrelated in that more specific areas for special treatment are proposed, and the pertinent organizational and participation questions are critical. Element 920.14 is relevant especially because it deals with the legal devices to be used to exert control over land and water uses. These legal devices can be effective if interrelated to the organizational structure for implementation and the public support garnered through participation and involvement.

Understanding of Scope of Services

We understand the scope of services to include, but not be limited to satisfactory completion of the following services.

1. Testing of organizational options and structures to carry-out the management program ranging from existing arrangements to a new cabinet-level agency.
2. Preliminary recommendations regarding the management portion.
3. Review, evaluate and recommend public awareness/involvement technique.
4. Review and evaluate the recommended mechanisms for inter-governmental coordination, information exchanges, and public access to information, research, and records generated.

5. Recommend methods for program adoption.

The above second year services are summarized in this report. Other services included continuing consultation and advice to the Department of Planning and Economic Development on coastal zone management program activities.

Executive Summary

This report summarizes the second-year work effort by A.J. Catanese and Associates for the Department of Planning and Economic Development as part of the management program development for the Hawaiian Coastal Zone Program.

A National Comparative Analysis

Thirty states, American Samoa, Guam, the Virgin Islands, and the Commonwealth of Puerto Rico are eligible to participate in the CZM Program. All have so chosen except for a few still considering, and the predominant organizational approach has been to give program responsibilities to an existing state agency. The state planning agency is most often selected, although a few states have created new agencies to handle the program. A number of states have created interesting organizational and management arrangements which are highlighted. A comparison using our organizational taxonomy is made as well. The basic intent is to learn what has been done in other states so that Hawaii might use or modify several elements to form a uniquely Hawaiian model.

Organizational Analysis and Recommendations

The five basic organizational options developed previously for Hawaii are restated. These are:

Option I-EXAGN.--designation of existing agency as lead agency.

Option II-NEWDIV.--creation of a new limited agency.

Option III-NEWDEP.--creation of a major new agency.

Option IV-OFFGOV.--creation of a new staff agency within the Governor's Office.

Option V-LOCAL.--a state lead agency with major delegation of responsibilities to counties.

These options are used for analytical purposes. They are not mutually exclusive and elements of several may be combined for a final alternative.

A number of different evaluations are made after reviewing the federal requirements for a state lead role with fiscal and administrative approvals. A review of DPED's policy option as developed is examined. A modified version of a Delphi Technique for simulating a consensus is discussed. A generalized examination of costs for the options is made. A number of qualitative variables are analyzed pertaining to such factors as: conflict generated; political acceptability; financial feasibility; flexibility; communications; participation; and group dynamics. This qualitative analysis culminates in a goals-achievement matrix which projects the likelihood of reaching certain conditions by each option.

The analysis leads to three major organizational recommendations:

1. DPED should be made the permanent lead agency and a new CZM Division be created within it.
2. A Policy Board should be created for policy guidance, conflict resolution, and designation of areas of particular concern.
3. The capabilities of DPED and other agencies in the network should be augmented and improved.

Organizational/Institutional Arrangements and Networks

The heart of the management program is a network of arrangements between DPED and federal, state, and county agencies. This networking is

composed of agreements and formal orders whereby DPED serves as a clearing-house for information about the coastal zone and provides the leadership role for coordination of activities, developments, and programs. This is crucial since the entire State of Hawaii is the coastal zone. For the state agency network, it is essential that the full commitment of the chief executive be made towards coordination of coastal zone matters, and that role be used extensively by the lead agency whenever necessary.

Federal arrangements are more complex due to the remoteness of the Hawaiian Islands and the large military presence. The federal consistency aspects of the network are such that DPED shall make the initial determination and provide a mechanism for certification.

The county role will be one of dealing with coastal zone problems that do not have impacts upon statewide concerns for the economy, environment, and state expenditures. The counties and their CZM Liaisons will function within the network with a direction towards consolidation of the myriad of permits and hearings.

Public Awareness/Involvement

A review is made of the considerable effort to date that DPED has made for giving citizens the full opportunity for participating in the development of the CZM Program. The Hawaiian effort is a massive one by any measure of comparison but especially so when compared to other state's efforts. Since DPED has made such a major effort, it is to be expected that a diversity of opinions and concerns will be expressed about the CZM Program. Only when there is no real citizen participation can any governmental agency show full agreement and complacent citizens.

While it is far too early to evaluate the PA/I Program, it seems that some streamlining could improve the communications flow and allow greater county group input. Similarly, DPED staff may have to provide greater direction in order to steer the groups in the direction to offer more popular concerns information and less sidetracking into technical matters.

Appendices

An appendix is included that uses the Corps of Engineers navigable water permits as a case study of organization and management problems.

Another appendix is an adaptation of Washington State's operational guidelines for federal consistency for Hawaii's program.

Chapter I

A National Comparative Analysis

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A National Comparative Analysis

Since each state is the legal equal of every other state in the federal system, state governments have certain common characteristics. Each state has a written constitution providing for three branches of government, with a legislature of two houses (with one exception) elected by a popular vote; a popularly elected governor as head of its executive branch; and a judicial system not essentially dissimilar in external organization from that of the other states. Each state controls the organization of its own state and local governments, the latter being created by the state to perform certain delegated functions. Superficially, all state governments appear to be more or less alike and appear to be doing the same things.

While state constitutions follow the federal pattern in that they contain bills of rights and adhere to the cherished American principle of the distribution of powers among the legislative, executive, and judicial branches, most state constitutions provide in considerable detail for both the organization and the functions of government. As a consequence, they are rather long documents in contrast to the national Constitution. While the constitution of Vermont, adopted in 1793, required fewer than 5,000 words, the Louisiana constitution of 1921 contains more than 200,000 words. Such elaboration of detail found in many state constitutions makes frequent amendment necessary, a process that is in almost continuous operation in a number of states. By amendment or by the adoption of new constitutions,

the states have attempted to readjust their institutions and organizational structures to meet changing needs. As a consequence, the surface similarities outlined above belie the organizational diversity that has emerged in state governments.

Organizational Initiatives and Relevant Legislation

Thirty states, American Samoa, Guam, the Virgin Islands, and the Commonwealth of Puerto Rico are eligible to participate in the Coastal Zone Management Program as authorized by Public Law 92-583. Contrary to those who think of coastal areas and estuaries solely in terms of a salt-water environment, eight of the eligible states border the Great Lakes, while twenty-four border the Atlantic, the Pacific, or the Gulf of Mexico. As one may anticipate from the historical diversity that underlies the development of the organizational structure of state governments, agencies assigned primary responsibilities for the initiation of CZM Programs vary considerable from state to state. Table 1 provides a current listing of state coastal management offices and related participating agencies.¹

As may be seen by cursory inspection of Table 1, several states have delegated CZM responsibilities to essentially a single agency (Alaska, Florida, Guam, Indiana, Maryland, New Jersey, Oregon, American Samoa, Virgin Islands, and Virginia); several such agencies, however, derive their mandate from fairly broad coordinative legislation regarding environmental concerns. Other states (California, Hawaii, Maine, North Carolina, South

¹Adapted from: Office of Coastal Zone Management, State Coastal Zone Management Activities-1974 (National Oceanic and Atmospheric Administration, U.S. Department of Commerce, October, 1974), updated as of May, 1976. A new edition of this publication is planned for the near future; updated information was derived, in part, from data collected for this new edition.

Table 1--State Coastal Management Offices and Major Participating Agencies, 1976

State	Coastal Management Office	Participating Agencies
Alabama	Alabama Coastal Area Board	Alabama Development Office Dept. of Conservation and Natural Resources Geologic Survey of Alabama
Alaska	Division of Policy Development and Planning	Dept. of Environmental Conservation
California	Coastal Zone Conservation Commission	Dept. of Fish and Game Dept. of Navigation and Ocean Development Dept. of Parks and Recreation
Connecticut	Department of Environmental Protection	Coastal Area Management Board Southeastern Connecticut Regional Planning Agency
Delaware	State Planning Office	Coastal Zone Management Committee Dept. of Natural Resources & Environmental Control University of Delaware
Florida	Bureau of Coastal Zone Planning	Dept. of Natural Resources Dept. of Administration
Georgia	Office of Planning and Budget	State Department of Law Dept. of Natural Resources
Guam	Bureau of Budget and Management	
Hawaii	Department of Planning & Economic Development	Dept. of Land and Natural Resources Dept. of Health Dept. of Transportation Office of Environmental Quality Control

Table 1 Continued

State	Coastal Management Office	Participating Agencies
Illinois	Department of Transportation	Dept. of Conservation State Geological Survey Northeastern Illinois Planning Commission
Indiana	State Planning Services Agency	
Louisiana	State Planning Office	Wildlife and Fisheries Commission Coastal Commission University Sea Grant Program
Maine	State Planning Office	Dept. of Conservation Dept. of Marine Resources Dept. of Inland Fisheries and Game University of Maine
Maryland	Department of Natural Resources	Chesapeake Bay & Coastal Zone Advisory Commission
Massachusetts	Executive Office of Environmental Affairs	Dept. of Natural Resources
Michigan	Department of Natural Resources	Ten Regional Planning Agencies
Minnesota	State Planning Agency	Dept. of Natural Resources Dept. of Economic Development Arrowhead Regional Development Commission
Mississippi	Marine Resources Council	Mississippi-Alabama Sea Grant Consortium Southern Mississippi Planning & Development District Gulf Regional Planning Commission

Table 1 Continued

State	Coastal Management Office	Participating Agencies
New Hampshire	Division of State Planning	Strafford-Rockingham Regional Council
New Jersey	Department of Environmental Protection	
New York	Office of Planning Services	Dept. of Environmental Conservation
North Carolina	Department of Natural & Economic Resources	Office of Marine Affairs Dept. of Administration Coastal Resources Commission
Ohio	Department of Natural Resources	Northeast Ohio Areawide Coordinating Agency Toledo Metro. Area Council of Governments Eastgate Development and Transportation Agency
Oregon	Conservation and Development Commission	Oregon Coastal Conservation and Development Commission
Pennsylvania	Department of Environmental Resources	Erie Metropolitan Planning Department Delaware Valley Regional Planning Commission
Puerto Rico	Department of Natural Resources	Puerto Rico Planning Board Environmental Quality Board
Rhode Island	Department of Administration	Coastal Resources Management Council Dept. of Natural Resources Univ. of Rhode Island Coastal Resources Center
American Samoa	Development Planning Office	

Table 1 Continued

State	Coastal Management Office	Participating Agencies
South Carolina	Coastal Zone Planning & Management Council	Wildlife & Marine Resources Dept. Dept. of Health & Environmental Water Resources Commission State Ports Authority State Development Board Land Resources Conservation Commission
Texas	State Land Commissioner	Texas Coastal and Marine Council Highway Department Industrial Commission Parks and Wildlife Dept. Water Quality Board
Virgin Islands	Office of the Governor	
Virginia	Division of State Planning and Community Affairs	Virginia Institute of Marine Sciences
Washington	Department of Ecology	Dept. of Natural Resources University Sea Grant Program
Wisconsin	Department of Administration	Dept. of Natural Resources Northwestern Wisconsin Regional Planning and Development Commission Bay Lake Regional Planning Commission Southeastern Wisconsin Regional Planning Comm. University of Wisconsin

Carolina, and Texas) have organized the diverse responsibilities associated with coastal zone management through a network of state agencies; such network relations are frequently coordinated through a policy committee, council, commission, or board. A number of states have included regional planning and/or development agencies or commissions directly among the participating agencies (California, Connecticut, Hawaii, Illinois, Michigan, Minnesota, Mississippi, New Hampshire, Ohio, Pennsylvania, and Wisconsin), in some cases delegating major planning and regulatory responsibilities to these substate agencies. This latter approach is most apparent among inland states such as Illinois, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin.

As summarized in Table 2, in the majority of cases the primary responsibility for the development of a coastal zone management plan has been assigned to an existing state agency, most often one that has other coordinative responsibilities for planning and/or environmental conservation. In eight states, the CZM planning responsibilities were assigned to a relatively new, free-standing agency (i.e., a recently created environmental protection agency), while in six states, the organizational structure of an existing state agency was significantly modified to accommodate a new division, bureau, etc. with coastal zone management responsibilities.

State level concern and legislative momentum to establish the mandate under which many of these agencies operate to provide planning and management of critical environmental resources are of fairly recent origins. As shown in Table 3, while coastal area legislation in a number of states pre-dates the National Coastal Zone Management Act of 1972, much of the relevant legislation has been enacted in the past six years.

Table 2--Locus of State Coastal Management Offices

Existing Agency	New Free-Standing Agency	New Agency within Existing Department
American Samoa	Alaska (1971)	Alabama (1974)
Delaware	California (1972)	Florida (1975)
Georgia	Connecticut (1970)	Maryland (1974)
Guam	New Jersey (1970)	Massachusetts (1973)
Hawaii	Oregon (1971)	Mississippi (1973)
Illinois	Rhode Island (1971)	North Carolina (1974)
Indiana	South Carolina (1973)	Washington (1971)
Louisiana		
Maine		
Michigan		
Minnesota		
New Hampshire		
New York		
Ohio		
Pennsylvania		
Puerto Rico		
Texas		
Virginia		
Virgin Islands		
Wisconsin		

Table 3--Relevant State Legislation Regarding CZM Programs

State	Date	Title
Massachusetts	1965	Coastal Wetlands Protection Act
Minnesota	1969	Shoreland Management Act
Oregon	1969	Beach Access Bill
Georgia	1970	Coastal Marshland Protection Act
Michigan	1970	Shorelands Protection and Management Act
New Jersey	1970	Wetlands Act
Delaware	1971	Coastal Zone Act
Maine	1971	Mandatory Shoreline Zoning and Subdivision Control Law
Virgin Islands	1971	Open Shorelines Act
Washington	1971	Shoreline Management Act
California	1972	Coastal Zone Conservation Act
Florida	1972	Environmental Land & Water Management Act
Virginia	1972	Wetlands Law
Alabama	1973	Coastal Areas Development Act
Mississippi	1973	Coastal Wetlands Protection Act
New York	1973	Tidal Wetlands Act
Texas	1973	Coastal Public Lands Management Act
Hawaii	1974	Shoreline Protection Act
North Carolina	1974	Coastal Area Management Act

In a number of states, the initiative for coastal zone management concerns emerged from a task force approach, as illustrated by the partial listing of these groups in Table 4. In several instances, these task forces were "institutionalized," i.e., incorporated into the organizational structure that has emerged in response to the Coastal Zone Management Act of 1972.

Table 4—Examples of the Task Force Approach to Coastal Zone Concerns

State	Task Force
Delaware	Governor's Task Force on Marine and Coastal Affairs
Georgia	State Interagency Task Force
Hawaii	Governor's Task Force on Oceanography
Maine	Governor's Task Force on Energy, Heavy Industry, and the Maine Coast
Massachusetts	Task Force on Coastal Resources
Puerto Rico	Coastal Zone Task Force
Rhode Island	Governor's Task Force on Narragansett Bay
Virginia	Coastal Zone Advisory Committee

The task force is a popular problem-study/solving approach in government as it is in business and industry. These ad hoc groups often are assigned a specific task or problem or may be more generally directed to examine some broader policy issue.

Functional and Organizational Arrangements

Primary responsibility for the development of the CZM Plan has been assigned to three different characteristic functional agencies as illustrated

in Table 5. In thirteen states, American Samoa, and the Virgin Islands, the state planning agency has been delegated the task of developing the coastal zone management plan, including the delimiting of boundaries, the identification of permissible land and water uses, the delineation of areas of particular concern, the designation of priority uses, and so forth. In several states, these activities are shared with regional or county planning agencies in the coastal areas. It is unclear at this point how many of these state planning agencies will continue as the lead agency required under section 306 of the CZM Act. It is interesting to note, however, that the current overall program designs for these thirteen states

Table 5--Functional Agencies with Primary Responsibilities for Coastal Zone Management Planning (Section 305)

State Planning Agency	Natural Resources/ Conservation/Environmental Protection Agency
Alaska American Samoa Delaware Georgia Hawaii Indiana Louisiana Maine Minnesota New Hampshire New York Rhode Island Virgin Islands Virginia Wisconsin	Connecticut Florida Maryland Massachusetts Michigan Mississippi New Jersey North Carolina Ohio Oregon Pennsylvania Puerto Rico Washington
Other Agency	Separate Coastal Management Agency
Guam Illinois Texas	Alabama California South Carolina

and two territories, with the exception of Maine, Rhode Island, and Virginia, include a major work element that focuses on an examination of alternative management strategies and organizational structures. By way of contrast, only three (Connecticut, Illinois, and Michigan) of the remaining nineteen states have identified this specific work element as a major study in their overall program designs (although all include work elements on alternative control/regulation mechanisms). In other words, it would appear that in those states in which a natural resources, conservation, or environmental protection agency has been assigned 305 planning responsibilities, there is relatively little concern regarding the appropriate agency to be designated as the 306 lead agency. In those three states in which more detailed management/organizational studies are underway, two (Connecticut and Michigan) are focusing primarily on the issue of state-regional coordination of 306 activities, whereas in the state of Illinois, the 305 planning agency is the Department of Transportation (the initial CZM grant recipient, however, was the Illinois Department of Conservation).

Designing the organizational mechanism to implement the goals, policies, and controls of a state's coastal zone management program is one of the most critical steps in the program development phase. To achieve compliance with the requirements of the CZM Act, a state should consider several important factors in the designation of its organizational structure:

- 1) Administrative Coordination: How can the state best coordinate its actions with those of local, regional, and interstate agencies in developing and maintaining the state's coastal zone management program?
- 2) Planning Coordination: How can the state coordinate the CZM program with existing plans, both at the state and substate levels?

- 3) Regulations and Controls: How can the state best administer land and water use regulations and control development to ensure compliance with the Act and to resolve conflicts among existing and proposed uses in the coastal zone?
- 4) Property Acquisition: What means are available to acquire interests in property, both land and water, if this action is necessary to conform with the state's approved coastal zone management program?
- 5) Public Participation: What steps can the state take to assure effective and continuing consultation and coordination with local governments and the general public for their full participation in carrying out the purposes of the Act and the state's CZM plan?

The particular organizational approach that a state selects to satisfy its own needs and to comply with the CZM Act will depend on several additional factors: 1) that approach, or combination of approaches, identified in section 306 (e)(1) of the Act which would be most effective for the state; 2) the structure and effectiveness of existing programs that control or regulate uses and activities in the state's coastal area; 3) the most effective distribution of administrative responsibilities among the local, county, regional, and state agencies and units of government; 4) the functional role and authority of the state's designated lead agency; 5) the most effective means of coordinating and correlating the individual management responsibilities authorized by the coastal zone management program; and 6) the role of the governor and the legislature in the implementation of program goals and policies.

While the designation of the state's natural resources, conservation, or environmental protection agency as the 305 agency for planning and the 306 lead agency for program administration may accomplish all of these objectives, it may be necessary in some states to design a new, free-standing agency to carry out these functions (as has been done in Alabama, California,

and South Carolina). This approach might be particularly appropriate in those instances where the existing natural resources/conservation/environmental protection agency is already responsible for a multitude of regulatory functions, and the addition of coastal zone management activities would create an undesirable administrative "overload." In other instances, however, the "in-place" agencies, both at the state and substate levels, can be organized most effectively through a coordinative network, whereby regulatory responsibilities would be distributed to a number of agencies or governmental units and coordinated through a lead agency having appropriate access to the governor (i.e., a staff agency). Under this approach, existing line agencies would be given responsibility to do those things that they can do best (e.g., regulate offshore oil and gas leases, regulate ports and harbor development, control hazardous areas such as flood plains and erosion zones, protect wetlands and other fish and wildlife habitats, regulate filling and dredging, control facility sitings, etc.), with perhaps a fairly wide distribution of these responsibilities. A state agency (state planning office, department of administration, etc.) appropriately would be charged with the responsibility of providing coordination for these regulatory activities at the state and substate levels.

Thus the flexibility for a variety of approaches exists within the CZM Act of 1972. The lead agency might assume partial or even total regulatory responsibility for controlling land and water uses in the coastal zone (as an existing natural resources/conservation/environmental protection agency or as a new, free-standing coastal zone management agency); or the lead agency's responsibilities might be limited to the coordination of other state agencies' activities to ensure that their

coastal-related actions are compatible with the state's coastal zone management program (i.e., as a network coordinating staff function). The lead agency might establish and indirectly enforce standards and criteria for uses and activities in the coastal zone, leaving direct enforcement to other agencies and units of government, while retaining certain responsibilities for overall effectiveness in management. The lead agency might become primarily a mediator among the various levels of government in resolving conflicts in the state's coastal zone. The lead agency's role might include a research and clearinghouse function to provide technical bases for the resolution of coastal-related problems and to coordinate the flow of information into and within the organizational structure, as well as information dissemination to the general public.

Functional Responsibility for Planning and Regulation

The basis for each of these approaches, as well as several combinations and permutations, can be found in the current management/organizational strategies being pursued by the thirty participating states. Under the authority of its Coastal Management Council Act, for example, Rhode Island divides the regulatory responsibilities between the lead agency and various state and substate units already involved. In Massachusetts, the governor by executive order has established a procedure whereby all permits and licenses that require his signature must undergo an administrative review by all concerned state agencies and substate units to assess the proposals impacts.

The Division of Marine and Coastal Zone Management within the Alaska Department of Environmental Conservation (established in 1971)

is responsible for the development of a plan for conservation and utilization of marine, coastal, and estuarine resources, and for reviewing permits for the use of the marine environment, wetlands, and adjacent uplands. Similarly, the Connecticut Department of Environmental Protection is charged with the responsibility for developing the State's CZM Plan and also has been given the legislative mandate to regulate all construction and dredging in tidal, coastal, and navigable waters and to develop a permit system regulating wetland use based on an inventory and mapping of the coastal wetlands within the state. These two states illustrate the approach whereby the CZM planning agency and the regulatory agency for coastal area development are one and the same (see Table 6 for a listing of states currently following this approach).

In the state of Georgia, on the other hand, CZM planning responsibilities are being carried out by the State Office of Planning and Budget, while a permit system regulating dredging, draining, removal, and other alterations of coastal marshlands is administered by the Department of Natural Resources through its Coastal Marshlands Protection Committee. This separation of planning and regulatory functions is also illustrated by the approach adopted in the state of New York, where the Office of Planning Services is charged with the responsibility for development of the CZM Plan, while the Department of Environmental Conservation serves as the principal regulatory agency for coastal zone related activities.

With the passage of the Coastal Wetlands Protection Act of 1973, the Mississippi Marine Resources Council became the regulatory agency for activities conducted on State-owned coastal wetlands, and was directed to include an overall plan for use of coastal and private wetlands in the

Table 6--Distribution of Planning and Regulatory Responsibilities

Planning and Regulation by Single Agency	Planning and Regulation by Separate Agencies	Shared State - Regional (Local) Responsibilities
Alabama Connecticut Illinois Maryland Mississippi New Jersey North Carolina Ohio Oregon Puerto Rico Texas	Alaska American Samoa Delaware Georgia Indiana Louisiana Maine Massachusetts Minnesota New York Rhode Island South Carolina Virgin Islands Virginia Wisconsin	California Florida Hawaii Michigan New Hampshire North Carolina Pennsylvania Washington

state's comprehensive coastal zone management plan. The "council" approach was also adopted by the state of South Carolina, where the Coastal Zone Planning and Management Council serves as the CZM lead agency, with regulatory responsibilities, however, vested in a number of other state agencies, including the Wildlife and Marine Resources Department, the Department of Health and Environmental Control, the Water Resources Commission, State Ports Authority, State Development Board, and the Land Resources Conservation Commission. In Rhode Island, the Coastal Resources Management Council was created in 1971 to provide a coordinative mechanism for regulation and control of coastal activities. The Council is closely related to the Division of Coastal Resources within the Department of Natural Resources, which serves as its staff arm, and to the Coastal Resources Center of the University of Rhode Island, which provides the Council with technical assistance. The CZM planning agency in Rhode Island, however, is the Statewide Planning

Program of the Department of Administration. Each of these council approaches illustrate the networking of state agencies to provide overall coordination of CZM activities.

The network approach has also been adopted by the state of Louisiana, where six major state agencies are involved in the coastal zone planning and management activities under the overall coordination of the Louisiana State Planning Office. The Wildlife and Fisheries Commission reviews water quality and impacts on fish and wildlife in the coastal zone. The Department of Public Works is responsible for water resource development, drainage, and flood control. The State Land Office protects state land interests, as does the State Mineral Board. The Board of Health is responsible for sewerage disposal regulation. Oil and gas activities are regulated by the Department of Conservation. There also are numerous State boards, commissions, and special districts regulating other activities in the coastal zone. As with the councils in Mississippi, South Carolina, and Rhode Island, the Louisiana State Planning Office serves as a clearinghouse and as the coordinative vehicle for these diverse regulatory activities vested in a wide range of state agencies.

Planning and regulatory responsibilities are divided among three principal agencies in Puerto Rico. The Department of Natural Resources is responsible for Puerto Rico's natural resources and is currently active in fisheries management, forestry programs, physical and biological oceanography studies, water resources planning, beach stabilization and control, and mangrove preservation programs. The Department of Natural Resources issues permits for sand extraction and exercises control over dredge and fill projects in navigable waters. The Planning Board is completing an island-wide comprehensive plan, including the recommendation of areas for

industry, ports, airports, and major highway and rapid transit facilities. In conjunction with the Department of Agriculture, the Planning Board has delineated prime areas suitable for commercial agriculture and may designate all or portions of these areas as protected agricultural zones in which conversion to urban or industrial use will be severely restricted. The Planning Board also issues construction permits for all building activities within urban areas and administers zoning and subdivision controls. The Environmental Quality Board is responsible for the formulation of policies and programs to meet federal and commonwealth water quality standards and, in cooperation with other agencies, is engaged in an ongoing program of air and water quality monitoring. A Coastal Zone Task Force has been established to serve as the vehicle for program development and inter-agency coordination.

The functional division of responsibilities adopted by the State of California illustrates the two-tiered approach, whereby CZM planning is carried out at the state level with implementation (regulation and control) delegated to substate (regional) authorities. The California Coastal Zone Conservation Commission and the six substate regional commissions under its guidance were created in November, 1972, when the voters approved Proposition 20, the California Coastal Zone Conservation Act. The Act charged the seven commissions to prepare a coastal zone conservation plan, with the state legislature having final responsibility for the implementation of this plan. The Act further provided for an interim permit control process to regulate development in that portion of the coastal zone lying between the three-mile limit seaward and 1000 yards landward of mean high tide. These permits are administered by the appropriate regional commissions. Within a specified

period after the effective date of the legislative adoption of the state-wide CZM Plan, county governments will be required to bring their General Plans into conformity with the state's CZM Plan. County governments will submit their General Plans to the Coastal Zone Conservation Commission for certification, after which the counties would then control coastal conservation and development, subject to a system of limited appeals to a state board to insure that approved plans are being followed in day-to-day decisions. The regional commissions, serving in an interim regulatory capacity in effect, will go out of business as counties within their jurisdiction have their General Plans certified.

The State of North Carolina has also adopted a two-tiered approach, with the state establishing areas of particular environmental concern and acting in a guideline-drafting and programmatic review capacity to local governments, except where the local units do not elect or fail to exercise their responsibilities. A system of major and minor permits also reflects this two-tiered arrangement.¹ The twenty coastal counties in North Carolina will develop land use plans to be adopted by the State's Coastal Resources Commission. Once these plans have been approved, the counties will take on enforcement responsibility, including the letting of permits for local developments. The Coastal Resources Commission will retain controls, through a permit system, for major developments of state-wide (or multi-county) significance.

In the States of Washington and New Hampshire, local governments have been given the primary responsibility for administering the regulatory

¹North Carolina appears in Table 6 twice as a consequence.

programs with authorization to issue or deny development permits within their areas of jurisdiction. In Washington, local decisions may be subject to appellate review by the Department of Ecology. No such appeals route has yet been established in New Hampshire. In both States, comprehensive shoreline use plans are to be developed by the local units of government under state guidelines.

These brief descriptions of the approaches adopted by various states illustrate the range of management/organizational strategies possible under the Coastal Zone Management Act of 1972. In the section to follow, several of these state approaches will be explored in further detail. A number of these state organizational structures were in place prior to the enactment of federal coastal zone legislation in 1972, and have undergone minor modifications in some states to ensure conformance with the requirements of section 306 of the CZM Act. In other states, new organizational approaches have been adopted (including the creation of new types of coordinative agencies or councils) or are currently under study.

To summarize, these approaches can be grouped into three broad categories: (1) a single agency for planning and regulation, (2) a coordinative networking approach, and (3) a two- (multi-) tiered approach. The single agency approach may require some consolidation of regulatory and control responsibilities that are now beyond the legislative mandate of the central agency (which in most cases is a natural resources/conservation/environmental protection agency). Failure to incorporate even the more peripheral regulatory activities into the central agencies realm of responsibilities may result in dysfunctional fragmentation and interagency conflicts that may prove detrimental to the overall objectives

of the state's CZM Plan. Assigning the planning and regulatory functions to the same agency also runs the risk of producing a plan that is limited to the current regulatory powers of the agency (which may or may not be broad enough to encompass all of the concerns relating to coastal area conservation and development).

The coordinative networking approach, whereby one agency is given overarching responsibilities for the planning and management of coastal zone concerns, with the more specific regulatory functions left with a variety of existing agencies, offers the opportunity for each participating agency to do that which it can do best. The state planning office can carry out the general planning activities associated with Section 305 of the CZM Act, assisted by the technical inputs from the various environmentally oriented agencies, health and transportation agencies, university researchers, and so forth. Lead agency responsibilities required under Section 306 can then be assigned to a coordinative council, commission, or task force, or if the agency is experienced in management and coordination, may be retained by the state planning office. The participating functional (line) agencies would then continue to carry out their regulatory responsibilities, expanded in some cases to ensure full coverage of the range of concerns associated with coastal areas.

The two-tiered (or multi-tiered) approach appears to be most appropriate in those states where relatively strong local, county, and/or regional planning commissions are in-place (with existing regulatory responsibilities), or where coastal areas represent a relatively small part of the total land use concerns of the state. The coastal area of New Hampshire, for example, is only a small portion of the total land area of

the State, and as a consequence, coastal development issues are more likely to be localized, i.e., left to local land use controls under general state guidelines. In North Carolina, the major-minor permit system permits the twenty coastal counties to plan and manage in the context of more local issues of conservation and development, while reserving for the state a regulatory role relating to issues of statewide or multi-county significance. It is interesting to note that North Carolina has adopted the same approach for the planning and management of its mountain area resources in the western portion of the state. A necessary component in most multi-tiered approaches is that of an appellate process (as adopted in the State of Washington) to provide for a state overview and a mechanism whereby citizens (or developers) can petition for a review of local decisions. The inherent problem with such an appellate process is striking a proper balance between the administrative review process and the judicial process. There is a tendency in such situations for the administrative process to become quasi-judicial.

Access to the Chief Executive

One last area of useful cross-comparison among the approaches currently operational in the participating states relates to the Section 306 requirement that the lead agency have appropriate access to the governor. Section 306 (c)(4) of the Act requires that the governor review and approve the state's coastal zone management program as a prerequisite for federal approval. In doing so, the governor acknowledges his state's intention to carry out the Act's objectives. The requirement of "appropriate access," therefore, is built upon the assumption that such access will ensure the

involvement of the chief executive and his immediate staff in the development of the plan and its subsequent implementation.

Traditional administrative theory would suggest that such access could best be gained if the agency for planning and management were directly responsible to the chief executive, i.e., operating as part of his immediate staff. In several states, the governor's staff is severely restricted (by constitutional provisions or by tradition), and as a consequence, a number of staff agencies have emerged (i.e., agencies organized to study administrative problems, to plan, to advise, to observe, but not to direct). A staff agency may be attached to a chief executive or to other principal administrators. As a general rule, staff agencies have no operating responsibilities. Staff service of advice and counsel may focus upward, downward, and outward, and across organizational lines; it is always advice, however, and never command.¹

A third approach involves the establishment of an independent board, commission, council, or committee, reporting to the chief executive (or some other high-ranking official) but operating outside the established chain-of-command. This approach is sometimes chosen in order to segregate a particular function from the normal subordination of administrative

¹Staff agencies in government fall into two classes: substantive and administrative. The former are responsible for advising their principals about the functional field in which they operate, such as agriculture, commerce, or finance. They have the duty to watch the course of events, to forecast trends, to spot emerging problems, and to deliberate and recommend future policy. Administrative staffs, on the other hand, are concerned with advice in the area of organization and management, that is, in the best adaptation of means to ends. In modern state government, these two classes of staff agencies often are combined, as when a department of administration has responsibility for planning and budgeting, or when the functions of planning and economic development are joined in a single agency.

agencies to the chief executive and to free it from some or all of the customary rules of operation. Such advisory boards often furnish a means of enabling interest groups to be heard. They also link officials with citizens who have special knowledge or interest in a function of government. Often such boards or commissions become "institutionalized," taking on the characteristics of a substantive staff agency. There is general consensus among administrative theorists that such boards, commissions, councils, or committees should not take on line agency functions, although they may serve in a regulatory capacity, establishing policy guidelines to be administered by appropriate functional agencies.

The principal agencies in any administrative system are organized on the basis of major substantive purposes, and are concerned with the provision of services for people, or with regulating their conduct in particular fields. Such agencies are concerned with the primary objects for which government exists. Their tasks emerge from the complex society in which and for which they perform their respective functions. Borrowing a figure of speech from military usage, such major substantive organizations are often called "line" departments.

The distinction between "line" and "staff" functions has become blurred in modern government. Many operating or line agencies carry out substantive staff responsibilities within their areas of functional expertise. The delegation of decision-making and policy interpretative responsibilities to line agencies results in a continuum of influence which overlaps areas in which staff agencies have traditionally operated. The creation of task forces, drawn from the representative expertise of line agencies, to serve in advisory capacities has further clouded the distinction

between line and staff (and between line agencies and advisory boards).

As shown in Table 7, each of these four organizational approaches have been adopted in the current activities of the states participating in the CZM program. In six states, the activities leading to the formulation of the CZM Plan have been assigned to an executive staff agency (or its equivalent), while in eleven states, these responsibilities are being carried out by a substantive or administrative staff agency (i.e., one not directly assigned to the governor's office). Six states have designated a board, commission, or council as the principal coordinative mechanism for current CZM activities. In eleven states, the planning responsibilities for the CZM program have been assigned to what essentially must be defined as a line agency.

Summary of Cross-Comparisons

Each of the thirty states, the three territories, and the Commonwealth of Puerto Rico has been categorized according to four management/organizational dimensions. The first of these focused on the choice of locus for the current state coastal management office, i.e., whether the office is located in an existing agency, represents a new division of an existing agency, or was created as essentially a new, free-standing agency within the structure of state government. The second dimension examined the functional responsibilities of the state coastal management offices, resulting in the following classifications: 1) primarily a state planning office, 2) a natural resources/conservation/environmental protection agency, 3) primarily a coastal zone management agency, or 4) an agency with other major functional responsibilities. The third dimension

Table 7--Organizational Approaches for Current CZM Activities

Executive Staff Agency	Substantive or Administrative Staff Agency	Board, Commission or Council	Line Agency
Alaska Georgia Guam Massachusetts New York Virgin Islands	American Samoa Delaware Florida Hawaii Indiana Louisiana Maine Minnesota New Hampshire Virginia Wisconsin	Alabama California Connecticut Mississippi South Carolina Rhode Island	Illinois Maryland Michigan New Jersey North Carolina Ohio Oregon Pennsylvania Puerto Rico Texas Washington

related to the distribution of planning and regulatory responsibilities, with the state approaches being categorized as: 1) single planning and regulatory agency, 2) planning and regulatory responsibilities in separate agencies and 3) approaches emphasizing shared state-local responsibilities for planning and regulation. The final dimension looked at the place of the CZM agency in the organizational structure of state government vis-a-vis access to the chief executive. The categories used in this final cross-comparison as shown in Table 7.

As might be anticipated when dealing with 34 governmental entities in terms of four analytical dimensions, each having several subcategories, there are likely to be a wide range of combinations in the management/organizational strategies pursued by the participating states. While eighteen different combinations emerge from this cross-comparison, a further grouping according to shared characteristics results in a reduction of this diversity to four basic patterns.¹

¹Rhode Island, Alaska, Massachusetts, and Guam represent a fifth or "all other" category.

The dominant pattern for current management of coastal zone activities involves the assignment of these responsibilities to an existing state planning office (either as an executive staff or an administrative staff agency), with regulatory functions being carried out by separate agencies (or at substate levels). Thirteen states have adopted this combined approach, including Delaware, Indiana, Louisiana, Maine, Minnesota, American Samoa, Virginia, and Wisconsin (where the state planning office is an administrative staff agency); Georgia, New York, and the Virgin Islands (where the state planning office is an executive staff agency); and Hawaii and New Hampshire (where shared state-local responsibilities are emphasized).

In seven states, current coastal zone management responsibilities have been assigned to a line agency which also combines planning and regulatory responsibilities. In five of these states the agency selected has primary responsibilities in the area of natural resources/conservation/environmental protection: Ohio and Puerto Rico (existing agency); Maryland (new division in existing agency); and New Jersey and Oregon (new, free-standing agency). In Illinois and Texas, these responsibilities were assigned to an agency with other functional responsibilities.

In five other states, the current coastal zone management activities have been assigned to a natural resources/conservation/environmental protection agency in terms of both the planning and regulatory functions. The approaches adopted in these states differ from the previous grouping, however, according to the following dimensions: 1) Pennsylvania, Michigan, and Washington emphasize shared state-local responsibilities for planning

and regulation, and 2) Connecticut and Mississippi have created a inter-agency council to coordinate regulatory activities.

Five states (Alabama, California, Florida, North Carolina and South Carolina) have created separate coastal zone management agencies, either free-standing or as major new organizations with the existing structure of state government. In Alabama and North Carolina, this new CZM agency has both planning and regulatory responsibilities, while in Florida and South Carolina the emphasis is on coordination with other agencies retaining major regulatory responsibilities. In California, the CZM council has adopted a focus of shared state-substate responsibilities for planning and regulation.

In the section that follows, one or two states representative of each of these basic management/organizational patterns will be discussed in further detail.

North Carolina: A Two-Tiered Compromise

Passage of the North Carolina Coastal Area Management Act in April, 1974 represents a remarkable feat of compromise when set against the backdrop of what is essentially a very conservative state that adheres to the philosophy that government is best when it governs least. The notion of strong land and water-use controls seems a contradiction in a state where only seven of its 100 counties are totally zoned.¹ The battle waged for passage of the Act was not without its casualties, and the resulting compromise failed to meet the expectations of many of its initial proponents. As State Senator Hamilton Horton, an environmental spokesman, observed: "It's just enough law to hold the loopholes together." Nevertheless, the two-tiered compromise that has emerged from the five years of legislative debate may well serve as a model for other states as they seek to maintain an appropriate balance between state and local initiatives in the planning and management of the critical resources of their coastal areas.

Although many of the barrier islands—known as the Outer Banks—that line the North Carolina mainland remain as they were when Sir Walter Raleigh brought his tiny colony to Roanoke Island in the sixteenth century, development of the Outer Banks has proceeded at an alarming rate since the early sixties, as hundreds of new beach cottages, mobile homes, condominiums, and resort businesses have placed added pressures on limited freshwater supplies, dwindling marshlands, and other scarce coastal resources. During the sixties, two-thirds of the state's shellfishing waters were closed to

¹In North Carolina, the county is a stronger arm of government than in most states since much of the land area is unincorporated and comes under the counties' direct jurisdiction.

oyster and clam harvesting largely due to development pollution.

In 1969, in recognition of the need for more uniform controls of the state's coastal development, the North Carolina General Assembly took initial steps to slow the loss of marshlands by passing dredge and fill legislation. In the same year, the Department of Natural and Economic Resources was directed to undertake a comprehensive study of needed controls for the orderly development and conservation of the coast. Added impetus to the drive for controlling beach development came with the passage of the Federal Coastal Zone Management Act of 1972.

The North Carolina Coastal Management Bill was introduced into the 1973 session of the legislature and received full support as top priority legislation by James E. Holshouser, the first Republican governor to be elected in the state in this century. The bill received immediate opposition from the more conservative coastal and mountain area representatives in the Democratic-controlled legislature. The measure, as originally written, gave the Governor power to appoint a nine-member Coastal Resources Commission that would have responsibility for designating "areas of environmental concern" having permit-granting powers for major developments in such areas. While county commissioners could grant permits for minor developments in the designated areas, opponents of the bill argued that the Governor's appointive powers took too much control out of the hands of county and local officials and gave it to the state. Thus, the major controversy centered on the issue of who would control coastal development. Many coastal residents feared that a state controlled coastal zone management program would result in a "no-growth" policy that could threaten the economic well-being of their businesses.

The 1973 General Assembly voted to delay action on the bill until 1974 in order to take the proposed measure to coastal citizens through a series of public hearings. Major opposition to the bill, led by irate city and county government officials, surfaced during these summer hearings. The bill's key sponsors in the legislature came away from these hearings convinced that increased local representation on the Coastal Resources Commission was essential to the bill's enactment, and therefore, between sessions the bill was re-written to increase the commission membership from nine to eleven. In the 1974 session of the General Assembly, further modifications to the bill were made, with the central attack still focused on the control of the commission. The bill called for members of the commission to fit designated categories such as fisherman, developer, ecologist, etc.; however, attempts by development interests to "stack" the commission with banking and real estate members succeeded and brought angry protests from environmental spokesmen. In late January, 1974, the House Environmental Committee increased the commission membership to 12 by adding a member familiar with financing coastal development and then voted unanimously to approve the bill. By this time, sponsors of the bill had agreed that more than half of the commission membership must come from the coastal area. Still, administration sources feared that local participation might eliminate state supervision called for in the federal Coastal Zone Management Act.

Opponents of the measure in the State Senate managed to tack on a series of amendments which exempted electric power plants and utility installations, and forestry and timber concerns from the act's control. Another change provided landowners a way to get relatively prompt court

decisions that could force the state to buy lands it sought to protect.¹ As the final Senate vote approached, a further compromise was struck, increasing the commission membership to fifteen and requiring the Governor to select ten members from a list of nominees prepared by the coastal counties. In an effort to insure Democratic control of the commission, a further amendment was passed unanimously, limiting the Governor's at-large appointments from five to three.

The bill finally passed the Senate by a 30 to 11 vote, and on April 9, after three days of marathon debate and 51 attempts to amend the legislation, the House passed the bill 74-33. Twenty-two of the amendments were included, and the bill was returned to the Senate for concurrence. A major change made by the House exempted prime farmland from the list of areas that could be designated as environmentally critical.

On April 10, however, the Senate voted 24-30 not to agree to the House amendments, with the bill's opponents claiming that they had not had time to read the changes. The Governor moved quickly to shore up any Republican erosion on the bill and urban Democrats worked feverishly to line up support. With much drama, final approval of the much-maligned measure came the following day.

The key provisions of the North Carolina Coastal Area Management Act, as finally approved, are as follows:

- (1) Creation of a 15-member Coastal Resources Commission, appointed by the governor with 12 of the 15 nominated by the 20 coastal counties. The commission is responsible for developing state guidelines for the public and private use of land and waters

¹Some feared that this amendment would put land management out of the state's financial reach. However, this provision requires the state to pay landowners only if they are willing to go to court and only if the court rules that the state's plans deprive the owner of making any use of his land whatsoever.

for designating "areas of environmental concern," and for granting permits for major development in the designated areas. In these activities, the commission is to receive staff assistance from the Department of Natural and Economic Resources.

- (2) Provision is made for a 47-member Coastal Resources Advisory Council to represent local governments, regional planning agencies, and six designated state departments.
- (3) Coastal counties are directed to develop, adopt, and implement land use plans within two years after the passage of the act. Such plans must be consistent with state guidelines and the act's policies and objectives, and must be submitted to the Coastal Resources Commission for final approval before becoming effective. If a county fails to complete a plan within 300 days after state guidelines are adopted, the state will prepare a plan for that county.
- (4) Permits are required before any major or minor development is undertaken in designated areas. No permit may be issued for development which is inconsistent with state guidelines or approved land use plan for the county in which it is proposed. Local governments can issue permits for minor developments, while the state reserves the power to issue permits for major developments. Enforcement of land use plans in areas not designated as areas of environmental concern is entirely a local responsibility, with no mechanism for direct state enforcement if local governments fail to act. However, the Secretary of Natural and Economic Resources shall issue permits for minor developments where the city or county fails to act in this capacity.
- (5) Interim areas of environmental concern may be established. While not subject to the act's permit requirements, developers must give 60 days notice in advance of initiating any development activities. Existing regulatory permits are applicable until October 1, 1976 (the permit changeover date), after which all existing permits shall be administered in coordination and consultation with the Coastal Resources Commission (but not subject to veto).
- (6) If the commission determines that any local government is failing to administer or enforce the approved implementation and enforcement plan for minor development permits, it may, after proper notice, "assume enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program."
- (7) Major developments in areas of environmental concern are defined as those which require "permission, licensing, approval, certification or authorization" from any one or more of a number of state

agencies. The major development category also includes any proposal that occupies more than 20 acres; which contemplates drilling for or excavating of natural resources; or which consists of a structure that covers more than 60,000 square feet of ground. The commission must schedule public hearings on all major development permits within 30 days of the application, with the burden of proof at the hearing being on the applicant.

By design or by compromise, a number of other states have adopted or currently are studying a two-tiered approach similar to that in operation in North Carolina. A major-minor permit system, under state promulgated guidelines for locally developed land use plans, with major permits under state control and applicable to designated areas of environmental concern, appears to offer a reasonable mechanism for maintaining an appropriate balance of responsibilities and initiatives between the state and local governments. The establishment of a state-level board, committee, or commission, with insured local representation, to develop overall policy and programmatic guidelines also seems to follow from this approach. Staff assistance to such a commission can then be provided by appropriate planning and/or regulatory agencies. This approach relies on a fairly complex coordinative network, while allowing existing agencies and jurisdictions to carry out those responsibilities traditionally granted to them.

Washington: State Standards and Criteria with Local Regulation

While the approach to coastal zone management adopted in the State of Washington parallels that of North Carolina in a number of respects, there are several key variations notably greater reliance on regulation through a locally administered permit system. The lead agency for regulation and implementation under the Washington Shoreline Management Act of 1971 is the Department of Ecology. This agency also administers state-

wide air and water pollution control and flood zone control provisions. The act vests primary responsibility for planning and regulation of the shorelands of the state at the local level.¹ The state, on the other hand, is given control of certain areas, called "shorelands of state-wide significance," with the power to supercede local plans or to negotiate with local governments concerning specific modifications.

An important feature of the Washington approach is the process by which land use plans are to be created and a system for the issuance of permits is devised. This process began with the issuance of provisional guidelines by the Department of Ecology (serving as both a planning and regulatory agency). Local governments commented upon the provisional guidelines and negotiated with the state to develop final proposed guidelines. Public hearings were then held and the guidelines finalized. After the guidelines had been approved, the major participants in the planning process became the local governments. Local governments have primary responsibility for inventorying their shorelines, developing "master programs" and related regulations, and for the initiation and administration of the permit system. If local governments fail to exercise this initiative within 24 months after the guidelines are adopted, the Department of Ecology will prepare and adopt a master program for the shoreline within such local jurisdictions. Local citizen participation is mandated as a responsibility of local government.

Upon the completion of the individual master programs, the plans are to be submitted to the Department of Ecology for review and approval. At this point, the Department of Ecology can opt to override and substitute its

¹Shoreline Management Act, C. 286, Sec. 3.

own plan in case of "shorelines of state-wide significance."¹ Moreover, the state can undertake negotiations with localities concerning the master plans as submitted, and in the case of disagreements between the Department and a locality, the local government has 90 days to resubmit a revised plan. While the state may develop a local master program where none exists, this provision does not preclude the local government from developing its own master program at a later time.

Once the whole master programming process is completed, a "State Master Seacoast Land Use Planning Program" will be in effect, as a compilation of the individual local master programs, as modified. Individual master programs are to serve as the basis for a local permit system for the control of uses in the coastal zone. The permit system must be administered consistent with the Act and the guidelines, dividing activities into categories of "development" and "substantial development," the latter including any development exceeding \$1,000 in total cost or which materially interferes with normal public uses.

A special state quasi-judicial hearing body has been created for appeals, a feature that seems to follow from the emphasis on local initiative and enforcement adopted by the State of Washington. All locally determined permits, whether approved or denied, are subject to challenge by the Department of Ecology and "any person aggrieved" through an appeal to the shorelines hearing board. Persons requesting appeals must be certified by the Department of Ecology or the Attorney General as having "valid reason to seek review." Further appeal is possible to the State Superior Court. The

¹Shoreline Management Act, C. 286, Sec. 9.

Department of Ecology may also petition the shorelines hearing board for recession of any authorized permit where noncompliance with conditions of the permit appear to exist.

The lack of continuity arising from a local permit system has often been cited as a major drawback to this approach; since regulations are applied on an individual basis, regulation tends to be incremental. Washington has attempted to achieve continuity in regulatory decisions by deriving each permit system from a master program, which in turn has been derived from a set of state criteria and guidelines.

Much of the state-local controversy generated in North Carolina appears to have been averted under the Washington approach through reliance on local participation in the formulation of guidelines for the master programs and direct local responsibility for the administration of permits. Only time will tell if the provision for a state override of local decisions, resulting in the initiation of the appellate process, will produce equivalent state-local hostilities.

Both approaches have adopted "mixed strategies" in terms of distinctions that may be made between conventional and transactive management/ planning techniques. By utilizing an established lead agency (the Department of Ecology) to coordinate an interactive process, the Washington approach has sought to minimize conflict. Structure rather than dynamics tends to be emphasized, however, with plans (master programs) serving to provide the interfaces. The approach followed in North Carolina began initially with "top-down" planning which generated considerable conflict. A networking of functions, stressing linkages (through the Coastal Resources Commission and the Coastal Resources Advisory Council) was invoked in hopes of producing greater cooperation in identifying and resolving conflicts.

Maine: Top-Down Planning and Coordination/Local Regulation

Although the coastal zone management program in Maine will be administered predominantly through local regulation (under state standards and criteria), a number of in-place direct state regulations resulting from previous legislation¹ must be coordinated with the more recent activities in coastal areas. Maine's approach to coastal zone management, therefore, has been to seek coordination through the provision of a coastal resources data base, as well as additional financial, technical, and administrative assistance to existing authorities and various state and regional agencies. At the state level, the CZM program has been coordinated through the Governor's Cabinet Committee on Land Use, with staff support from the State Planning Office. To insure the necessary coordination of the various planning, regulatory, and enforcement activities, central state agencies, including the Board of Environmental Protection, the Shoreline Zoning Policy Task Force, the Land Use Regulation Commission, and the Critical Areas Registry Board, have been directed to adopt policy statements that provide for the incorporation of coastal zone management policy and resource analyses into decisions made by these bodies.

In spite of a strong emphasis on local regulation in Maine, the Site Location of Development Act of 1970 calls for the exercise of certain state regulatory functions, currently vested with the Board of Environmental Protection (formerly the Environmental Improvement Commission), including the power to control certain types of development through a permit approval system. Regulated are those developments that: (a) require a health, air

¹Wetlands Control Act of 1967 (12 MRSA 4701-4709); Site Location of Development Act of 1970 (38 MRSA 431-488); and Wetlands Protection Act of 1971 (12 MRSA 4751-4758).

or water pollution license; (b) occupy more than 20 acres of land; (c) cover a ground floor area of over 60,000 feet; (d) require drilling for or excavating of material resources; and/or (e) require the use of a borrow pit for sand and/or gravel and are larger than five acres. (There are considerable similarities between these specifications and those adopted in Washington state.) Developments in these categories must submit an application to the Board of Environmental Protection, detailing the project, its history, its location objectives, performance standards, and so forth. The Board then either approves the application or schedules a public hearing. Permits may be conditioned to ensure environmental quality based on other agencies recommendations. Hearings are held if the proposed development arouses public interest or more information is required from the developer. Appeals may be made to the State Supreme Court; the statute provides for no civil liabilities to be imposed aside from compliance with state regulations.

The approach which has been adopted in the State of Maine provides a further variation of the themes discussed in connection with the states of North Carolina and Washington. In Maine, vertical and horizontal coordination is sought through the state planning function, through improved data and information, and through various forms of technical and financial assistance. In-place regulatory systems are relied upon, with the coordinative mechanisms following the more traditional approaches of conventional management/planning systems.

Florida: Administrative Review for Consistency

The Environmental Land and Water Management Act, passed by the State

of Florida in 1972, closely approximates yet another alternative method--if not in practice then in theory--for achieving state-local coordination. Two categories of management/planning are specified by the Act: (1) Areas of Critical State Concern, and (2) Developments of Regional Impact. The "regulatory mechanisms" applied in the process of reviewing Developments of Regional Impact exemplifies the method of administrative review for consistency with state management programs.

Developments of Regional Impact are defined as those which have a substantial effect upon the health, safety, or welfare of the citizens of more than one county. In addition, twelve specific types of development are considered automatically: (1) airports, (2) attraction and recreation facilities, (3) hospitals, (4) industrial plants and industrial parks, (5) electrical generating facilities and transmission lines, (6) mining operations, (7) office parks, (8) petroleum storage facilities, (9) port facilities, (10) residential developments, (11) schools, and (12) shopping centers. Developments of Regional Impact are regulated by local governments with automatic review by the state. Initial approvals or denials are made at the local level; the state's role is limited to approval for consistency with the state's land and water management plan, not on the merits of individual decisions. Thus, the role of the state is not a pre-emptive one, but rather is established to aid local governments to integrate DRI reviews into existing local land use decision-making processes.¹

There are three situations where a developer may be required to seek approval of a DRI. If the proposed development is to be located within an

¹ Bureau of Land and Water Management, What Is A DRI? (Tallahassee, Florida State University, 1974).

Area of Critical State Concern, the developer must comply with both state and local regulations which have been adopted for such areas. If the development is to be located in an unregulated area, the local government and the state have ninety days in which to adopt local regulations or to declare the area an Area of Critical State Concern. If no action is taken within this time period, the developer may proceed. In areas where local regulations are in place, the developer must submit a DRI application to the local jurisdiction. The regional planning agency for the area is also notified and makes its recommendations to the locality. The decision, however, rests at the local level, subject to an administrative appeals process at the state level.

This approach closely approximates the so-called A-95 Review Process currently applicable in all states. Except for Areas of Critical State Concern (where the state's interests are coordinated through a Bureau of Coastal Zone Planning, with regulatory responsibilities vested in various line agencies), the regulation of developmental activities having impact on coastal areas is left to local jurisdictions. Administrative review of all plans, projects, and regulations and an administrative appeals process take the place of state promulgated guidelines prior to the development and adoption of local plans and regulations. In order to establish the complete framework for the Florida system, however, local land use controls (zoning and subdivision regulations) should be in-place in all or most local municipalities and counties, the eight regional planning bodies should be established, and a state land use plan should be completed.

Even in the early stages of its efforts to establish this regulatory system, Florida encountered several problems. Twenty-eight of the sixty-

seven counties and one-third of the local jurisdictions did not have zoning or subdivision controls at the time the Act was passed. Only in a few cases did those regulations that had been adopted have "any demonstrated relationship to a rational, well-conceived, publicly-adopted, comprehensive plan."¹ Only two of the eight regional planning agencies had been established, and since the state land use plan is to be developed through the combined efforts of regional and state planning agencies, the plan's completion has been delayed until these regional bodies are organized. A further problem has risen from this lack of complete organizational structure. The DRI review process is rather complicated and difficult to grasp, necessitating a somewhat lengthy educational process involving all levels of government, developers, and the public at large. The missing linkages in the organizational network has reduced the effectiveness of this education/information transfer. Meanwhile, the state has undertaken to provide some interim guidelines to make the purpose of the legislation more explicit.

The intent of the Florida approach is to provide a framework which should ensure, to the extent possible, uniformity in decision-making and review. However, to date, the system has operated on a project-by-project basis, an approach which tends to result in a lack of continuity, especially in view of the fact that the objective is to provide an administrative review for consistency with a state plan, not of the merits of the facts on which the local decision was based. Thus, the Florida approach has suffered

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Ernest Bartley, Status and Effectiveness of Land Development Regulations in Florida Today (Tallahassee: Division of State Planning), p. 16.

from inadequate institutional/organizational preparation, a relatively long gearing-up period, and the complexity of the legislation itself.¹

Summary

The preceding discussion has focused on the management strategies and organizational structures adopted in four states in carrying out their coastal zone management responsibilities. Particular attention has been given to the division of responsibilities between state and local governments and the variations on the basic organizational themes possible in pursuit of the provisions of the Federal Coastal Zone Management Act of 1972.

A two-tiered compromise was reached in North Carolina after much political debate that has resulted in a fairly complex coordinative network through which existing agencies and jurisdictions can carry out those responsibilities traditionally granted to them. The key organizational features of the North Carolina approach is a state commission with insured local and functional representation and a major-minor permit system that focuses the state's regulatory activities on areas of environmental concern, while leaving all other regulation to local (county) jurisdictions.

The State of Washington has also adopted a two-tiered approach but with the primary responsibility for planning and regulation vested at the local level. The state has retained an "override" of local decisions, however, resulting in the initiation of an appellate process. The attempt to achieve continuity in incremental regulatory decisions at the local

¹
Ann H. Berger, Method of Control of Land and Water Uses in the Coastal Zone (Washington, D.C.: Office of Coastal Zone Management, NOAA, October, 1975), p. 32.

level (and thereby obviating the need to exercise the override) centers on state promulgated standards and criteria to guide the development of local master programs.

Maine's technique of direct state regulation of specific activities through a permit system is by its nature easily established. The only organizational arrangements necessary were the appointment of a commission, the budgeting of a staff, and the education of the public and other governmental agencies as to the intent of the law. Since no specific and formal planning was required by the Site Location of Development Act of 1970, it was not necessary to spend interim time carrying out inventories and land use studies prior to the regulation of development. However, with the passage of the Mandatory Shoreline Zoning and Subdivision Control Act in 1971, municipalities were provided with the authority to plan and regulate inland and coastal lands. As more local communities have adopted their own control systems, the conflicts between state and local governments have intensified over regulatory powers. The Maine experience points up the problems with vesting specific regulatory powers at the state level for the control of certain defined activities (such as the extraction of resources, dredging, harbor development), while granting more general regulatory responsibilities to the local governments.

The Florida approach illustrates the technique of administrative review for consistency with the state management program, whereby considerable reliance is placed on local initiatives for planning and regulation. The Florida experience also points up the need to have a well-developed organizational network in place at the local, regional, and state levels (including appropriate plans against which local decisions can be reviewed for consistency) before such an approach can be made fully operational.

Chapter II

Organizational Analysis
and Recommendations

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Organizational Analysis and Recommendations

The first year report on organizational structure and management entitled Organizational Structure, Management, and Implementation of Hawaii's Coastal Zone Management Program (DPED, Document 7, 1975), provides a background for these concerns. That report included an inventory of organizations, institutions, and activities involved in the coastal zone. The report included as well a number of organizational options for the CZM Program lead agency.

It is useful to restate those five options at this point. These are basic options in the sense that they are framed in terms of underlying concepts of organizational structure, communications, and efficiency, rather than specific idiosyncracies of bureaucracies. This is not to say that these basic organizational options form a complete set. There are possible combinations of these basic options--such as conceivably employing two or more at the same time. Similarly, there are a large number of permutations of the basic options in the sense of using specific features of several options to form a new option. Thus it is intended that these basic organizational options be considered in this generic sense in order to provide a basis for analysis and evaluation that will allow for substantive findings. These substantive findings can be utilized to design a specific set of recommendations as part of the coastal zone program.

Since these are basic organizational options which are to be presented within the complex parameters of Hawaii's coastal problems, it should not be surprising to discover that each has a respective set of

advantages and disadvantages. The respective advantages and disadvantages will be presented summarily for each option, with the detailed analysis and evaluation to follow.

Organizational Option I-EXAGN.--Designation of Existing Agency as Lead Agency

Since an organizational structure of state government already exists, there is much merit to the concept of designating an existing cabinet-level agency as the lead agency for the Coastal Zone Management Program. The Department of Planning and Economic Development, which is designated as lead agency currently, could continue to function as such. It would be considered within the scope of the basic option to allow another Department, such as Health or Land and Natural Resources, to assume such a lead agency status if deemed more appropriate. The DPED is shown in Figure 1 to remain as the lead agency.

There are a number of advantages for the option. The foundation for the assumption of more responsibility in the coastal zone exists already in the Department in light of its existing authority as the lead agency. Even if this authority were transferred to another Department, there would be an existing basis for expansion of responsibilities in a single agency. The single agency approach makes clear the authority and responsibilities which should be sufficient and necessary conditions for better communications and coordination. The public could enjoy an increased access to state officials dealing with coastal matters through this approach. Furthermore, the setting for interagency and intergovernmental coordination would be improved and expanded. As important is the political consideration that the Department has established a set of relationships with the Governor and Legislature

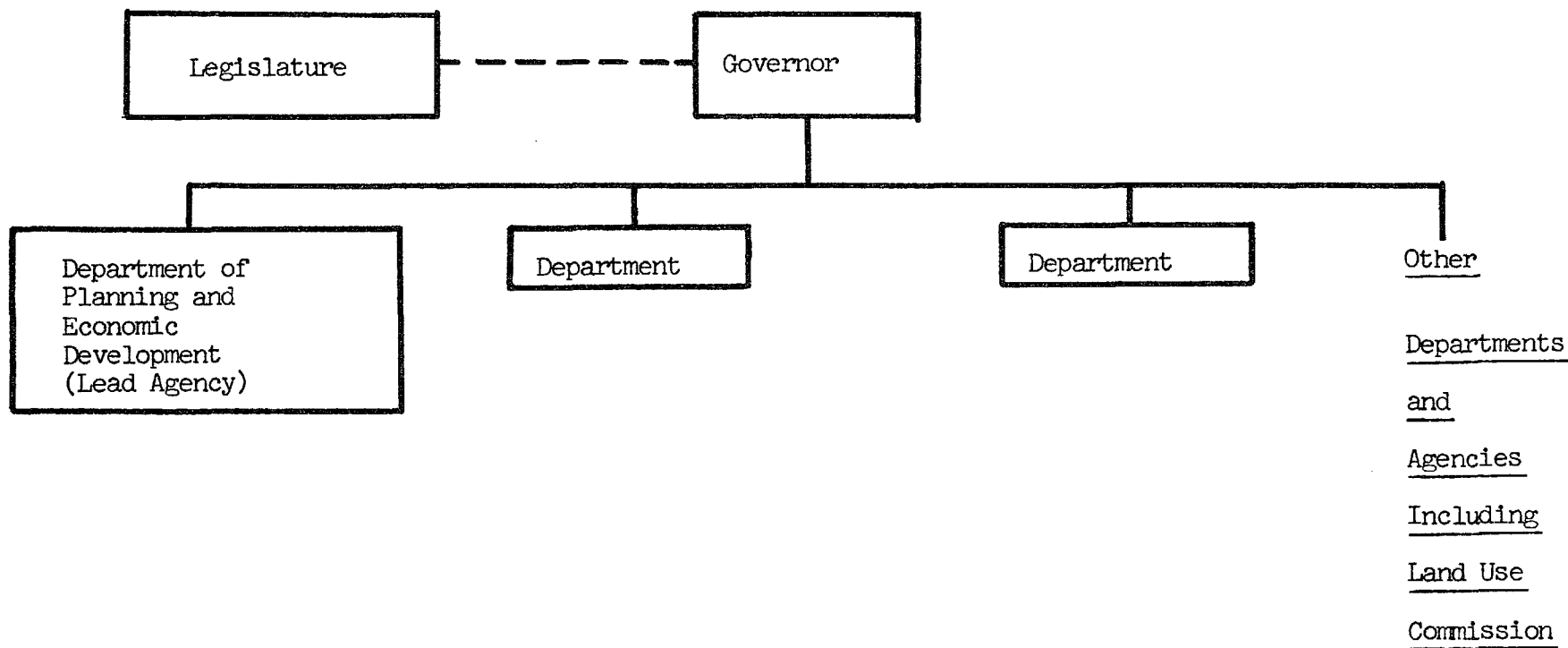


Figure 1. Organizational Option I-EXAGN. -- Designation of Existing Agency as Lead Agency

which can serve as an advantage for the evolution of new coastal zone responsibilities.

There are a number of disadvantages as well. The designation of any existing agency as the lead agency for coastal zone management means that existing problems, traditions, and entrenchments are inherited. Thus, the land-oriented experience of the DPED will be inculcated into a program with equally important water problems. Similarly, the management style of the Department, or any Department for that matter, will be transferred into the new set of responsibilities. If it were necessary to incorporate functions into the lead agency that are now located elsewhere, it can be assumed that there will be problems of adjusting to the existing style. This tends to imply that there is a certain inflexibility in existing bureaucracies that tends to impede the assumption of new major responsibilities. The public may be affected adversely due to previous experiences with the existing agency as well as a stereotyping that occurs from the mass media. A disadvantage of serious concern is the proclivity of legislatures to hold funding levels of existing agencies even with new responsibilities. Finally, there are the problems of transfers of responsibilities between existing agencies which could lead to grudges, misconceptions, and other impediments to the lead agency's role in coordinating the activities of other agencies.

Organizational Option II-NEWDIV.--Limited New Agency

There is some sense in going a step further than the first option and creating a new agency at the sub-cabinet level to serve as the lead agency

for the coastal zone management. A Division of Coastal Zone Management within an existing Department, as shown in Figure 2 is a basic option. The Division could be part of such departments as DPED; Health; Land and Natural Resources; and possibly some others. The lead agency would have a limited set of powers consistent with federal requirements but not of cabinet-level status. While it is conceivable that a lead agency could be of a lower organizational status than a Division, such as, bureau, program, etc., it would seem that the lesser organizational status of such an approach would not be in keeping with the intent of the national program.

The advantages of the limited new agency within an existing department include the introduction of a new organizational entity and concomitant authority and responsibilities into an agency with existing strengths in related areas. Thus, many of the advantages of the first option could be included within this option, as well as gaining new and permanent staff to handle the program. The basis for expansion of resources would exist since there is a new organization. The political support that the existing Department enjoys could be used as leverage for expanding support for the new organization. A final advantage, as suggested in Hawaii and the Sea--1974 (DPED, 1974), is that the creation of a new Division is a comfortable way to centralize many of the programs in the coastal zone without the trauma of major reorganization.

The disadvantages of this option are embedded within the notion of tying into an existing agency and not going far enough in bringing together the needed programs. The very nature of this approach would mean that important programs will not be transferred into the new Division since the

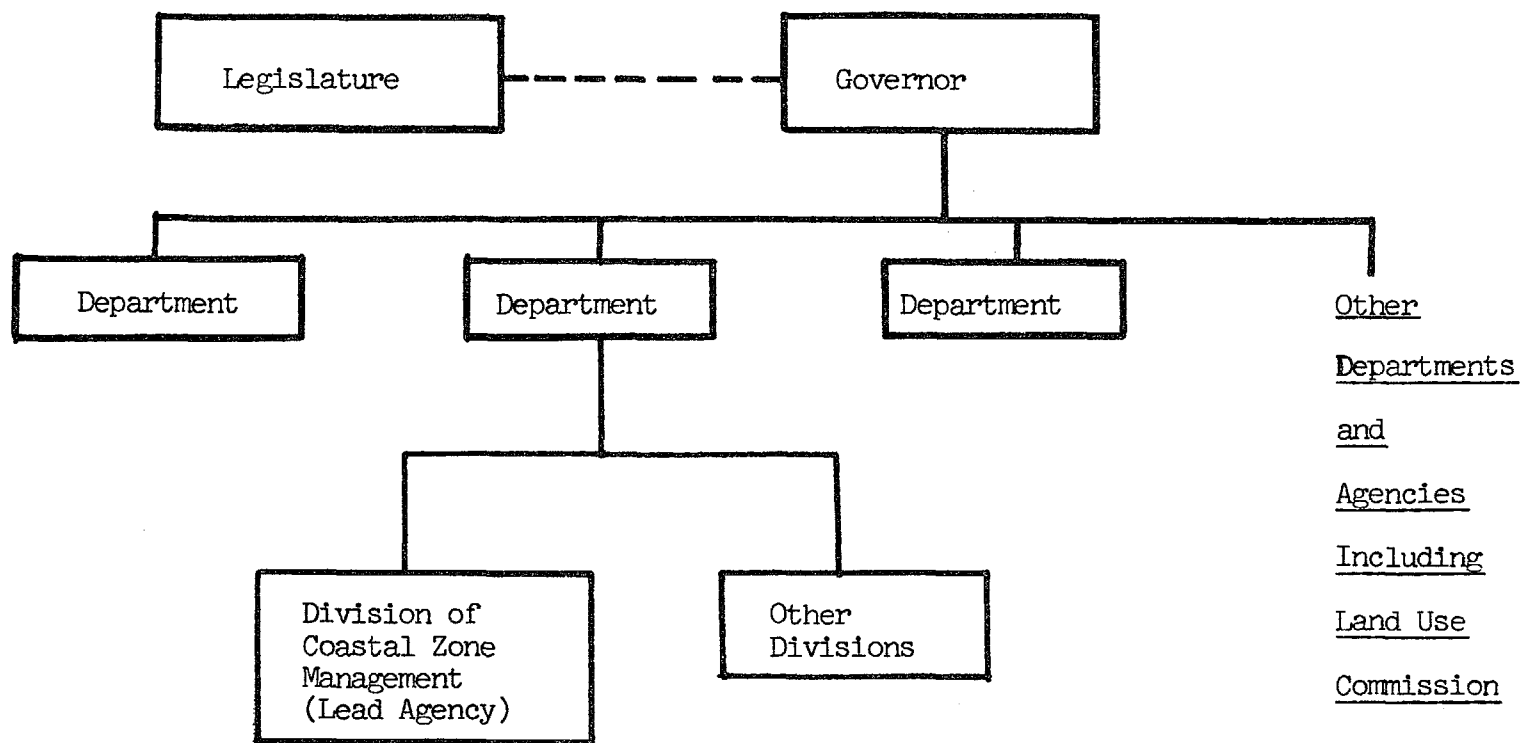


Figure 2. Organizational Option II-NEWDIV.—Limited New Agency

lead agency would not be powerful enough to force the issue, if that is deemed important. Similarly, the head of the agency would be coequal with other Division heads and much competition would exist. The limited agency could be an infrequent advocate before the Governor and would require that such direct communications be retained by the parent agency director. Coordination of programs of cabinet-level agencies would appear difficult within this organizational option—for example, how effective would a Division be in coordinating a line department's activities? Many of the problems of bureaucratic entrenchment would remain, and access to the public could vary with the nature of the departmental incumbents and differing communications styles at the top levels. While there is a basis for a permanent staff, this would appear to be a limited staff and only essential resources, since there is a certain equilibrium that is necessary with other existing divisions.

Organizational Option III-NEWDEP.--Major New Agency

The next logical step in organizational integrity and significance would be a new cabinet-level agency for dealing with coastal matters—such as, a Department of Coastal Zone Management. The new Department would receive a number of programs currently located elsewhere in state government, and it should emerge as a relatively powerful, centralized management agency. The aforementioned report entitled Hawaii and the Sea--1974 envisioned such a Department as the ultimate solution to the organizational problems of both the landward and seaward aspects of coastal zone management. Parenthetically, this same report described an entity such as that of Option II as an interim step towards this goal. It is quite clear that a cabinet-

level organization with major powers would be the most comprehensive and probably the most controversial and difficult to attain.

The option portrayed in Figure 3 would have a number of major advantages. The departmental-level organization would allow a formidable foundation for the consolidation of authority and responsibility, planning and management, and accountability into a single agency reporting directly to the Governor and on an equal plane with all other state functions.

Communications with the Governor and Cabinet would be facilitated, and major achievements in coordination should be possible with the full backing and confidence of the Governor. Good relationships could be established with the Legislature, because the new agency would be free of past problems. The public would have ease of access to the new agency and a proper constituency would be created in a reasonable period of time. An adequate and permanent staff would be recruited which would help the agency form a cadre of professionals with job security. The new agency would require a significant contribution of state and federal funds which can be interpreted as proof of a major commitment to resolving coastal zone problems. As a parenthetical note, it can be seen that a Department is proposed rather than a commission, which might be permissible under the federal guidelines, a la California. This is done because the Hawaii context and history have shown that Departments constitute the highest level of organizational prestige and power which commissions do not, and they are not favored because they represent new levels of government.

Along with such a major reorganization comes a host of problems. The most obvious disadvantage is the difficulty of creating a new cabinet-level

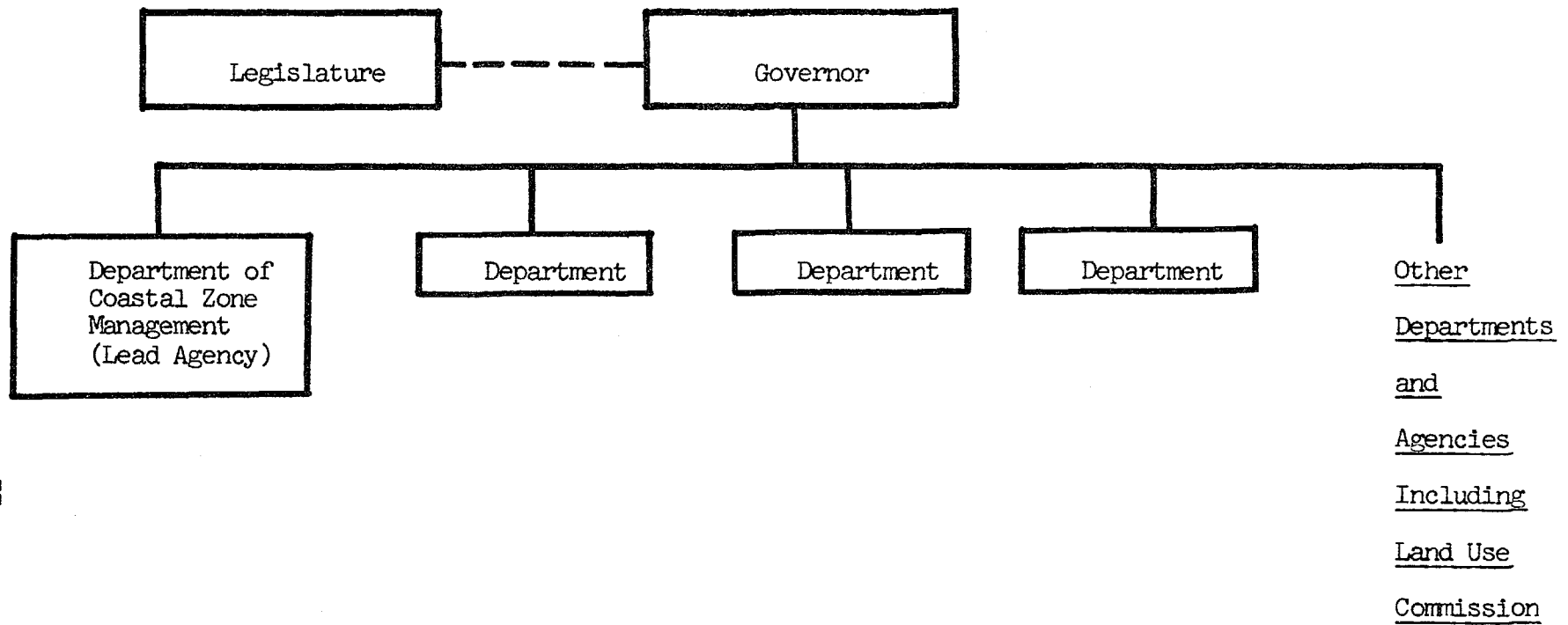


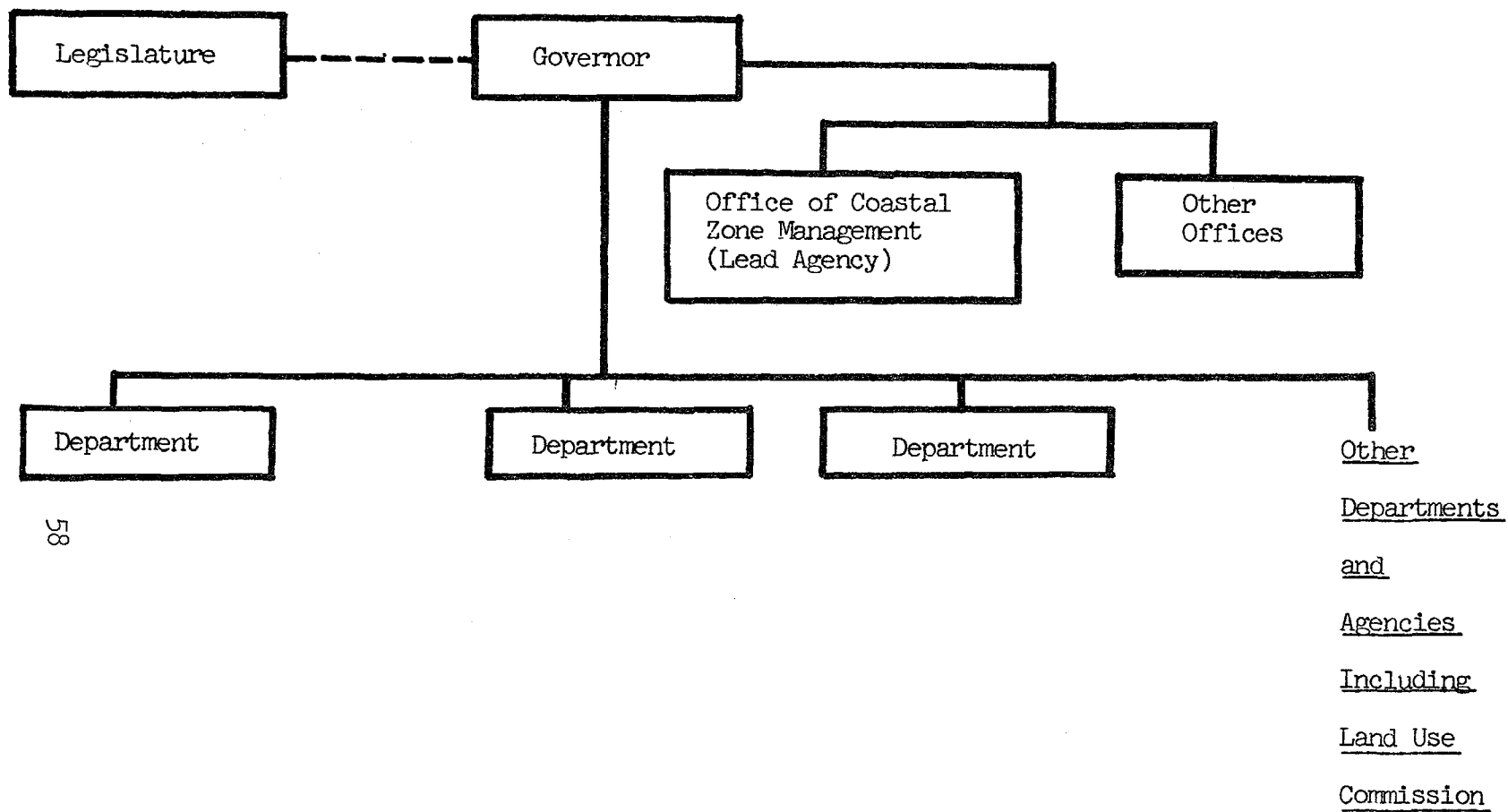
Figure 3. Organizational Option III-NEWDEP.-- Major New Agency as Lead Agency

organization in times of cutbacks and cost-consciousness in government. It will be certain that many would attack this option as a new layer of government as well as bureaucratic expansionism. Even existing departments will likely criticize such a new organization on the basis that the responsibilities can be discharged adequately within existing agencies. There can be expected a major political fight within both the bureaucracy and Legislature. Special interest groups will particularly oppose a new Department since it would destroy the series of communications linkages that they have built-up with existing agencies. There is also a question of how long it will take the new agency to develop its own set of communications linkages with the Legislature, special interest groups, and public, in light of the strengths of already existing agencies. The legal basis for the new agency will be problematic, since it must be carefully interrelated to all other agencies of the state and counties as well as the Federal Government. A concluding disadvantage of this option is that some line will have to be drawn so as to indicate which functions will be transferred to the new agency and which will be allowed to remain in existing agencies. Assuming that it is unrealistic to transfer all state functions involving coastal matters (and relying on coordination to some extent) into the new Department, it will be necessary to carefully choose which functions shall be transferred-realizing fully that there is bound to be major opposition in both bureaucratic and political terms. The disadvantage is that there is a danger that the final outcome could be an aggregate of losses and wins that does not add up to any sort of organizational triumph.

Organizational Option IV-OFFGOV.--New Agency in Governor's Office

Most of the organizational perspectives of the first three options are of a line agency or operating nature. An additional option is to leave the operating programs of the existing agencies relatively intact and rely more heavily upon a staff agency, directly reporting to the Governor (and enjoying full gubernatorial support) to coordinate the myriad of activities. This is not meant to imply that Departments do not have staff activities, but rather that this option is based upon the theory that the best approach for a staff agency is to place it within the direct control and province of the chief executive office. The option shown in Figure 4 would locate an Office of Coastal Zone Management within the Office of the Governor on a plane with such agencies as the Office of Environmental Quality Control, and others. Its primary duties would be to advise the Governor on all coastal zone matters and effectuate coordination of such activities using the full resources of the Governor's Office.

The major advantage of this organizational option is the proximity to the chief executive officer. This means that the highest executive level would be informed of coastal zone matters on a regular basis. The organizational characteristics of such an option allow for much flexibility of style, procedure, and approach while satisfying federal requirements. The ability to coordinate the various programs affecting the coastal zone is enhanced, especially since the Governor's role is so crucial in this option. Good accessibility is provided to the public, while major expenditures and staff commitments are not necessarily required due to the limited nature of this organization. It may be plausible to assume that this approach offers the



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Figure 4. Organizational Option IV-OFFGOV.-- New Agency in Governor's Office

widest leeway in communications and coordination without major reorganization and resource expenditures.

The inherent disadvantages of the option are that all the above advantages will vary greatly with the personalities involved, since there will be few on-going line agency functions. In other words, the political aspects involved in the option will determine its success or failure. The staff will be necessarily small and most likely outside of the regular bureaucratic structure--this may lead to a high level of politicization which could be either a disadvantage or advantage. There will likely be much change inherent in this organizational option, since political changes will involve new personalities. While coordination and communications will have an impressive base upon which to build, the base could be eroded completely if the agency lost the Governor's confidence. There is a tendency for such an agency to develop a stereotype as an elitist agency isolated from the public and other state officials. In summation, there is a pervasive disadvantage in that there is wide latitude within which such an agency could work or fail--this is the most variable of all the options.

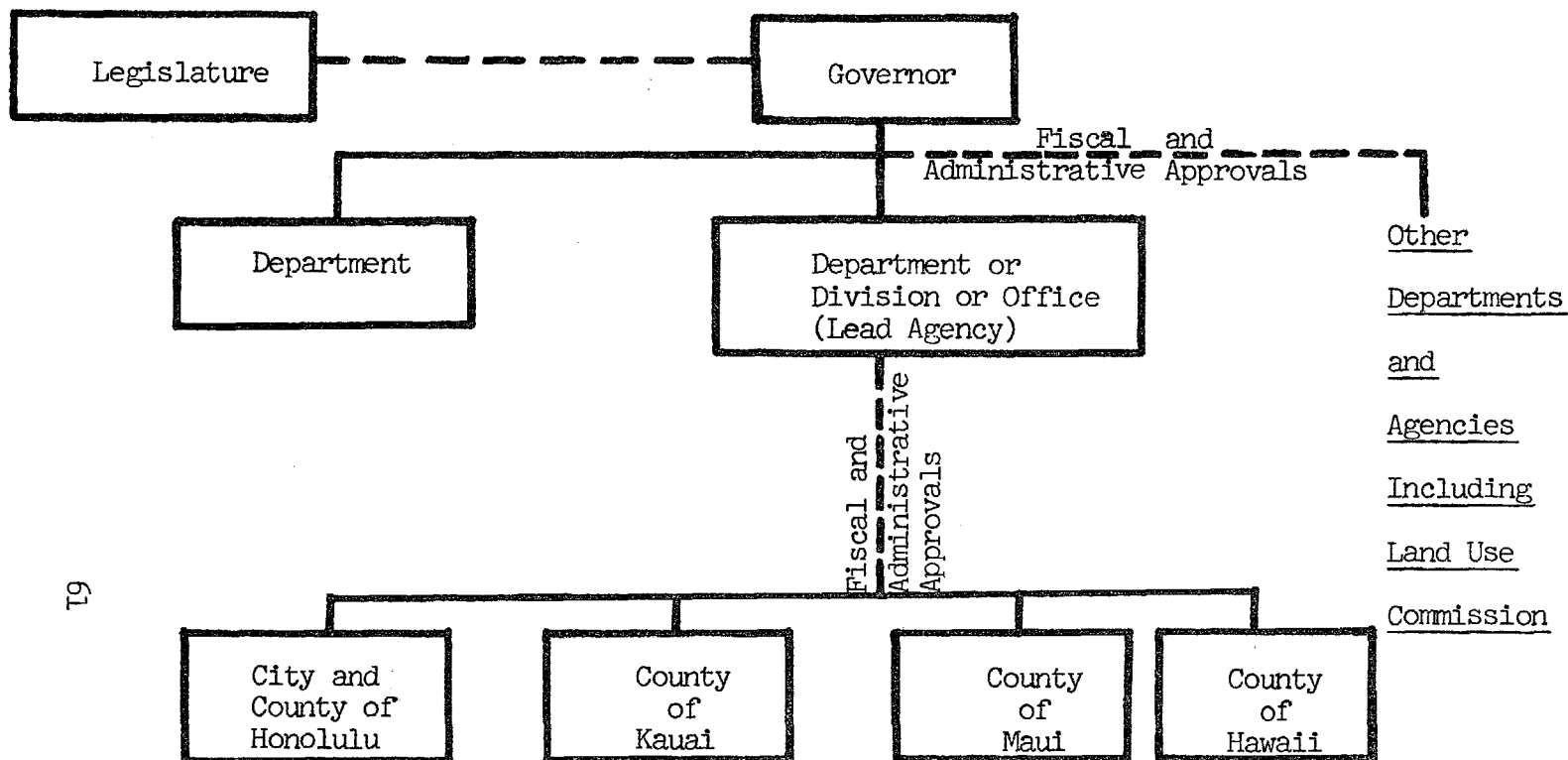
Organizational Option V-LOCAL.--State Lead Agency with Substate Delegation of Responsibilities

One of the most misunderstood aspects of the National Coastal Zone Management Act of 1972 is the misinterpretation of its Section 306(c)(5) to mean that the state must assume all of the responsibilities of the coastal zone management program. The CZM Act requires that "a single agency (state) receive and administer the grants for implementing the management program." Interpretations of this clause made by advisors to the Office of Coastal Zone Management say that states may retain the lead agency responsibilities for

fiscal and administrative approvals of substate agency coastal zone management programs, thereby delegating program formulation and implementation to substate agencies (Coastal Zone Management Institute, Coastal Zone Management: The Process of Program Development: Sandwich, Mass.: The Institute under contract with NOAA, 1974).

The organizational option that is implied in this correct interpretation of the CZM Act is a decentralized approach, as shown in Figure 5, whereby the state lead agency acts as fiscal and program approval source while the substate agencies, counties in Hawaii's case, act as program formulation and/or implementation agencies. There is a wide degree of variation that can occur within these parameters, but the concept is essentially one of state agency delegation of program formulation and/or implementation to county agencies while retaining lead agency responsibilities. In other words, Options I through IV could serve as lead agency and pass-through funds and responsibilities.

The advantages of this option are inherently those of the decentralization of a historically centralized bureaucracy. Advocates would argue that this will bring government in the coastal zone "closer to the people," and that most problems could be solved by counties. The State can retain its influence in the coastal zone, since the lead agency is still the funding and program approval entity, yet the daily operations can be passed-through to the counties. This would mean that no new layers of government would have to be created, and county responsibilities could be increased. This State-County partnership could serve as a model for intergovernmental cooperation in many complex areas. The nature of the activities included



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Figure 5. Organizational Option V-LOCAL. -- State Lead Agency with Substate Delegation of Responsibilities

within the coastal zone program can be expected to be more localized which can be seen as an advantage since Hawaii's Counties are local in the sense of being distinct island areas.

The disadvantages of this option are related to the lessening of program impact that will likely emerge. The CZM Program would most likely become an extension of existing county planning departments with minimal state involvement. Issues that are of statewide significance and complexity will be unresolved in all likelihood through this Option. This would result probably in a dispersal of program resources to substate agencies with lessened efficacy. This diffusion of resources could lead to a less than adequate development of staff competence and capabilities since the funds would have to be spread thin. The resources retained by the State lead agency would be modest, and major staff competence at the state level should not be expected to emerge. This would seem to imply that the staff would be impermanent and small in distant locations. This will surely lead to an uneven distribution of coastal zone staff capabilities between counties. The overall result would probably be a localization of coastal zone issues with decreased state presence and capabilities. It has long been argued that Hawaii is unique among the states in that a strong, centralized state government has provided public services and policies at a high degree of quality. This organizational option would seem to imply that this was not possible in the coastal zone, and management services and regulation should therefore be placed in more localized patterns.

Federal Requirements

The evaluation of these five options has included several criteria. The obvious starting point is the CZM Act itself. The Act is very flexible,

however, in specification of state organization. It is quite clear, nonetheless, that the intent of Congress was to utilize "the state, in accordance with the provisions of this title, setting forth policies, objectives, and standards to guide public and private uses of land and water in the coastal zone (S.304.g)." In S.302.h and S.303, the Act calls for state level action and state leadership in intergovernmental cooperation, coordination, and integration of relevant policy interests, views, and activities and "the unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance." Thus, there seems little doubt that the congressional intent of the CZM Program was for state leadership in land and water use issues of wider than local relevance.

The only specific requirements of the CZM Act have to do with designation and authorities. Section 306.c.5 of the Regulations requires that the governor designate a single state lead agency to administer the grants for implementation of the CZM Program. The Governor of Hawaii so designated DPED in 1973 for purposes of CZM Program (305) formulation. The Hawaii Legislature also in 1973 enacted Act 174 which designated DPED as the lead agency for preparation of a coastal zone management plan in accordance with the CZM Act. Section 306.d requires that the lead agency "receive and administer grants for implementing the management programs" and that the agency have administrative and fiscal approvals for these funds, including such funds that as pass-throughs to local governments (Section 306.f).

Thus, it does not appear that Congress or NOAA had any favored option in mind for organization of the lead agency. In fact, it seems as though

the Act left considerable discretion to the governor, provided that these basic conditions are met. It appears that Options I-IV could all meet the federal requirements for state lead agency, and Option V-LOCAL could be in compliance if and only if the state involvement and leadership were inherent, and proper fiscal and administrative approvals are instituted.

Having come to this conclusion, we believe that it is most important to seek an organizational structure that would enable implementation of the CZM Program within a Hawaiian context and be in the best interests of Hawaii. There are no applicable federal laws or regulations, in our opinion, that require otherwise or mandate any particular option. The evolution of options has proceeded along these lines while at the same time insuring that the CZM Act requirements can be met.

Charette Evaluation

To many architects, the term en charette is a familiar one meaning a prodigious work output to produce a plan. A similar exercise was held by DPED staff, from all levels, along with its consultants and their staff, during a two day session. The intent was to hammer-out a policy proposal for the CZM Program prior to completion and perfection of all of the inventories and technical studies. This approach is similar to the "sketch plan" of architects and planners but rarely used by policy analysts. The technique allows for early sketching-out of a plan even though the complete supporting information is not available. The principle advantage is to receive early feedback on the proposal.

The organizational and management proposals emanating from this approach, as formalized in Mr. Hideto Kono's 15 January 1976 memorandum are

as follows.

- 1) Designation of DPED as the Section 306 lead agency for Hawaii.

The DPED would provide on-going staff capabilities and perform the required fiscal and administrative controls required by the CZM Act.

- 2) The State Plan Policy Council, which was created by the Legislature in 1975, composed of four county planning directors and eight state agency heads, be given additional responsibilities for the CZM Program. These responsibilities would include policy advisory and integrative assignments pertaining to the program, with the intent being policy formulation and inter-agency conflict resolution. In addition, using the concept of Areas of Particular Concern (developed further in companion studies), the Council would designate and arrange the regulatory apparatus and agencies for areas with problems of statewide significance.

- 3) In effect, consider the entire state as the coastal zone, but to direct attention towards APC's. This would insure that both statewide and county issues would have a proper basis for consideration. The intent, however, would be to allow county management of local and minor activities and developments with the State clicking-in to large scale developments and activities that would impact the State's development, economy, taxes, and expenditures.

The feedback to this sketch plan type of policy proposal is still being received. Many of the responses have been generally favorable to the date of this writing. Elements of this proposal seem feasible and are incorporated into our recommendations. These elements and various questions raised are covered below. The result of the charette, then, appears to have the potential of implementation with refinements being made.

Modified Delphi Evaluation

A relatively new tool for evaluating alternatives for program exploration, articulation, and planning is the Delphi Technique. Developed at the Rand Corporation in the 1950's, the Delphi Technique allows for broad questions to be made specific and attitudes assessed. The series of reiteration of responses, usually written answers to questionnaires, reiterates until a consensus is reached.

Using techniques developed by Andre Delbecq and associates, as presented in Delbecq et. al., Group Techniques for Program Planning (Glenview: Scott, Foresman and Company, 1975), a modified version of a Delphi Technique was used to assess the degree of consensus on organizational issues of Hawaii's CZM Program. The essence of our modification was to ask a range of people with different interests to respond informally to a series of broad questions on major organizational and management issues. These interests included state, federal and county officials, as well as legislators and citizen group leaders. Respondants remained anonymous in order to assess the independent attitudes of those with deep interests and important knowledge. In general, they are decision-makers or opinion-leaders. These broad responses were then reformulated to determine areas that seemed to enjoy a consensus, or at least a similarity of interest, as judged by the consultants. The final wave of responses were synthesized to reflect the areas of consensus.

It should be pointed out that this approach deviates in two ways from the formal Delphi Technique: 1) responses to questions were recorded by interviewers rather than the respondent; and 2) the respondents tended to be decision-makers and group-leaders and thus changed over the period

of time involved. Neither of these two modifications demean the integrity of the approach.

As a supplement to the response set, an independent group of technical specialists was put through a similar exercise in order to detect any evidence of particularly indigenous factors that might be Hawaii-specific. In this case, a group of advanced planning graduate students from an east coast planning school volunteered to serve as an "expert panel." Their responses might be viewed as unbiased and purely technical.

This exercise was useful in order to obtain a feeling for the areas of consensus on these basic organizational issues from a group of decision-makers and opinion leaders, as well as to test to deviations from the expert panel. The utility of this information should not be overplayed, however. Many factors that occur in political situations and various group dynamics makes for divergence of actions from simulated areas of consensus. This makes the modified Delphi Technique more valuable as a tool to point the direction in which consensus might be reached on matters that have technical merits and content as well as subjective.

Several areas of concensus have emerged through the series of questions raised with members of the participating panels.

1) A key to the successful implementation of the CZM Program is the State Plan. The State Plan should be the mechanism to orchestrate the trade-offs between a wide range of public concerns by providing clear policy statements. One respondent suggested that the CZM Program output could constitute as much as 40 percent of the interim product of the State Plan process to be presented to the Legislature in 1977.

2) A clearly delineated "role-set" should be forthcoming (through CZM and the State Plan) regarding state-county relations. There must be substantial input from the counties in the formulation of the State Plan. The counties must play a major role in any permit system that might be devised under CZM Program especially on matters less than statewide relevance.

3) The whole state should be designated as the Coastal Zone for planning purposes with the State's management role focusing primarily in Areas of Particular Concern that have statewide impact. APC's should be designated in the State Plan and should receive legislative approval with the adoption of the Plan.

4) There is little need for a separate administrative process for the designation of Areas of Particular Concern--such designation should come through the legislative process with the adoption and annual review of the State Plan. The designation of the APC's could come through the legislative process and administrative process.

5) It is not necessary to create a separate regulatory agency, and some entity within DPED could perform the CZM Program functions. Regulatory and monitoring functions could be carried out by the State Plan Policy Council with a possible implementation role for Land Use Commission.

6) A major-minor permit system is viable with clear delineation of categories of development in each level and designation of exemptions in accordance with EIS procedures. The focus of a one-stop permit system should be at the county level with triggering procedures to involve other state and federal agencies as appropriate. All activities within APC's should be viewed initially as requiring a major permit.

There are some areas of differing views, including the following questions.

1) Incremental versus comprehensive designation of APC's: some respondents felt that APC's must be designated incrementally, using the success of the initially designated areas to build support for the inclusion of other areas, whereas others felt that the designation of APC's must be comprehensive to avoid the need for interim administrative designations between legislative sessions.

2) The need for a separate appeals process: some respondents felt the need for a separate appeals process (Board of Appeals) whereas others felt that existing judicial and legislative procedures were adequate to handle such potential issues.

3) The need for an administrative interim designation: this need ties back to the two previous points--if APC's are designated by a legislative process but the initial designation is not comprehensive, what happens between legislative sessions if a critical environmental area needs the protection of an APC.

In summary, a good deal more consensus emerged than was expected. The respondents seemed to be opting for: (a) statewide delineation of the coastal zone, with the state's focus primarily on Areas of Particular Concern within this broader definition; (b) a clearly defined, shared system of responsibilities (State-County), with the counties taking the lead in the administration of localized activities in areas outside the APC's; (c) an organizational structure that builds on existing components in DPED with regulations being promulgated through the State Plan, which would be adopted (in 1977) by the State Legislature (including initial

delineation of APC's), and with the State Plan Policy Council serving as the monitoring agency (with some implementation functions perhaps delegated to the Land Use Commission); and (d) a one-stop permit system that could be tied into other permit and/or approval processes (e.g., harbor regulations that involve county, state, and federal agencies), with such a system being tied to county permit procedures (except for APC's).

The second component of the Modified Delphi Technique was the expert panel of technical people. As mentioned, we used a 26 person, advanced graduate student seminar at an east coast university. The seminar was on "Public Policy Analysis and Implementation" and was composed of persons about to become (many of whom had previous experience) public managers.

These expert volunteers went through four rounds of delphi-like evaluation using various options as the questionnaire basis. The fourth round led to virtual consensus and was terminal. While expectedly more generalized than the Hawaii respondents, the expert panel did not show any substantive deviation from the Hawaii results. This leads us to suspect that while there may be indigenous factors in the Hawaii results, they are not unreasonable or irrational.

The expert panel consensus was as follows.

- 1) The CZM Program should be incorporated into the organizational structure of Hawaiian government rather than being made an independent, separate entity. Coherence can be attained better by networking than through accumulation of regulatory functions in a single agency.

- 2) Counties should play the major role for coastal activities that do not effect the State's economy, development, or expenditures in a major way, but the State must provide the leadership for statewide matters of

the coastal zone. This can be operationalized through the APC approach.

3) It follows that the entire State should be considered as the coastal zone for both planning and management purposes since it is a State-county program. The APC's will be used for special management purposes by the lead agency and policy council.

4) The organizational structure should be a continuum of authority and responsibility from the county to state level. The policy council should act to set specific delineations and designate APC's, perhaps with the approval of the Governor.

5) It appears quite clear that the leadership for the CZM Program will have to come from the policy council and lead agency staff and will require a major commitment by the Governor as well as support from the Governor.

Thus, as mentioned, there is surprising convergence between the Hawaiian responses and the expert panel responses. This provides an interesting basis for evaluation of the organizational options.

Costs and Effectiveness

It is not possible to undertake a costs and effectiveness analysis on the sort of prospective organizations advanced by the five alternatives. It may be better to estimate the parameters of the problem in order to gain a feeling for the scope of costs involved.

We have estimated a minimum cost for staff and supplies that seems to be a minimum level of capability which we call the "Core Module." In other words, we believe that this core module is essential, regardless of funding sources or organization type, if there is to be even a minimal staff capability in the lead agency during the implementation of the CZM

Program. Table 8 reflects our estimate of a \$449,974 core module cost for the lead agency. This does not include other costs associated with the CZM Program that are known to exist; i.e., consultants; inspectors; field personnel; staff in other state agencies; staff in county departments other than planning departments; sanctuary costs; ancillary construction; capital equipment; ancillary loss compensation; and legal costs; as well as other costs not yet known. We estimate, in fact, that the full cost of implementing the CZM Program to be in the neighborhood of \$2.5 to 3 million per year.

The core module, then, is only a minimal, rock-bottom estimating tool for parameter estimation. It has emerged essentially from the experience of DPED over the last two years with its staffing and supplies and expenses costs. It is a minimum in the sense that it represents a level of funding to basically meet the minimum federal requirements but not to meet the full potential of the program. It would necessitate extensive use of personnel in other state agencies and in the counties as well as consultants in order to do more than remain eligible for minimal funding--both of which would add greatly to the total program costs.

The core module estimates best correspond to minimal costs for Option I-EXAGN and Option IV-OFFGOV, within the limited use of the concept defined above. In other words, operating at this minimal satisficing level of federal requirements, and nothing more, Options I and IV could fall into this price range. By extension, then, we could argue that Options II-NEWDIV and Option III-NEWDEP could also be within this price area. While that is true technically, realistically we must assume some increased overhead costs, especially for Option III. We also must expect a more

Table 8

Core Module for Lead Agency Staff and Expenses

<u>1. Professional Salaries:</u>	
a. Manager and six professionals	\$116,800
b. Fringe benefits ¹	35,914
<u>2. Clerical/Technical:</u>	
a. Accountant, librarian, 4 secretaries	52,400
b. Fringe benefits	16,112
<u>3. Graduate Student Assistants:</u> ²	23,000
<u>4. Travel:</u> ³	25,000
<u>5. Supplies and Expenses:</u>	50,000
<u>6. County Liaisons:</u> ⁴	
a. 5 professionals	100,000
b. Fringe benefits	30,748
Total	<u>\$449,974</u>

1 Current benefits equal 30.748% of salaries

2 Three planning students from PUSPP on internship

3 Includes travel costs of PA/I members

4 To become permanent employees of DPED

extensive program simply to justify such an organization. Relying upon a comparable program, since the heart of the staff work will be directed to the networking and APC questions, and examining Florida's experience in dealing with the Environmental Land and Water Management Program (as reported by Earl Starnes, "The Critical Areas Program: A Development Management Process in Florida" and in discussion with him), we believe that Table 9 expresses a more likely estimate for Options II and III. We call these estimates core module augmented because the calculations are based upon considerable expansion of professional staff. We believe this may adequately reflect Option II-NEWDIV but may be too small for Option III-NEWDEP. The reason for this is that there is no overhead built in for routine departmental functions and operations for Option III-NEWDEP. If we were to assume a rather typical overhead rate for federal research grants of 87% of direct salaries, the true costs would be closer to \$1,193,333 for Option III-NEWDEP.

Estimating the parameters of cost for Option V-LOCAL is actually the most difficult since it can be viewed in so many different ways. For example, the often-heard figure of a potential \$1-2 million annual grant from Section 306 could be viewed as simply a pass-through with the State providing the matching funds through core module funding or core module augmented funding. In any sort of pass-through program, this sort of process is not unusual; that is, local demands vary with funds available, as seen in revenue-sharing programs. So we could simply argue that Option V-LOCAL as a pass-through would cost whatever is available in federal and state funds.

Table 9

Core Module Augmented for Lead Agency
Staff and Expenses

1. Professional Salaries:

a. Manager and 15 professionals	\$236,800
b. Fringe benefits	72,811

2. Clerical/Technical:

a. Accountant, librarian, secretaries ¹	104,000
b. Fringe benefits	31,978

3. Graduate Student Assistants: 50,000

4. Travel:² 40,000

5. Supplies and Expenses:³ 100,000

6. County Liaisons:

a. 5 professionals	100,000
b. Fringe benefits	30,748

Total \$766,337

1 Proportional increase to professional staff

2 Increment of \$15,000 for professional staff

3 Proportionate to professional, technical, and clerical staff

A slightly more acceptable approach is to assume an increase of county effort as proportionate to the state effort in the core module augmented and use the core module funding pattern for the State lead agency. In other words, this would assume four county liaisons each for Honolulu and Hawaii and two each for Kauai and Maui for a total of 12 liaisons. This would mean a cost parameter of \$633,021, as shown in Table 10. This is not entirely accurate, however, since no county supporting services are shown. Using the research grant overhead for estimating the parameter of the county overhead, we can see that this would amount conservatively to \$208,800 of the county direct salaries. Therefore, the cost parameter of Option V-LOCAL is probably in the order of \$841,021.

These estimates do not satisfy the need for cost-effectiveness analysis of the organization when it is operational. They do give some perspectives on the costs. As part of Section 306 evaluation, some in-depth cost-effectiveness analyses should be undertaken.

Qualitative Variables

There are many variables in the analysis of organizational options and structures that cannot be readily quantified or analyzed in other than subjective terms. These variables are qualitative in nature and do not enjoy the replication that would be expected from the results of a scientific method analysis. About the best way that we can handle such variables is to briefly discuss our professional opinion, acknowledging that we are trying to be objective and detached. Obviously, there would likely be differing evaluations by groups with less detached bases and more special interest in the organizations, which we assume have merit for

Table 10

Pass-through and Core Module Estimates

1. Professional Salaries:

a. Manager and 6 professionals	\$116,800
b. Fringe benefits	35,914

2. Clerical/Technical:

a. Accountant, librarian, and 4 secretaries	52,400
b. Fringe benefits	16,112

3. Graduate Student Assistants: 23,000

4. Travel: 25,000

5. Supplies and Expenses: 50,000

6. County Liaisons:

a. 12 professionals	240,000
b. Fringe benefits	73,795

Total	<u>\$633,021</u>
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further discussion. Our discussion, then, could be considered as the technical viewpoint towards a series of non-technical goals and issues.

Conflict Generated

It might be considered as a goal to propose an organizational structure that would not lead to conflict in government and between groups. Such conflict would impair the possible impact of the CZM Program and could even lead to impediments for success or continuance. While there may be issues of CZM that require consciousness-raising leading to conflict-raising, the issues of organization seem least likely as suitable for such purposes.

We believe that Option I-EXAGN and Option II-NEWDIV have the least potential for raising conflicts. This is basically because they involve a continuation or upgrading of existing situations. The only conflicts foreseeable would arise from other agencies desiring the lead agency responsibilities or from groups seriously opposed to existing organizational arrangements. While both of these may exist to some degree, they do not appear to be major problems, in our opinion.

Option III-NEWDEP would be the organizational structure that would cause the most conflicts to be generated. Entire divisions would have to be taken away from existing departments to create a new department. There would arise bitter conflicts most likely reaching legislative and political levels of confrontation. Option III-NEWDEP would require a virtual redistribution of power, responsibility, and authority within Hawaii State Government that would have traumatic effects. This option would be the most problematic of all if conflict is to be minimized.

Two options would have both positive and negative dimensions with regards to conflicts generated. Option IV-OFFGOV would have lessened conflict potential since it concentrates on Executive Office coordination and staff rather than line roles. No agency would lose or gain power. On the other hand, it would appear to be perhaps an elite organization that was above and beyond existing agencies. It could appear to be the chief executive's personal CZM Program thus impairing legislative relations. A similar set of problems could arise with Option IV-LOCAL. While it might be viewed as lessening conflicts between the State and counties by decentralizing the program (to a degree), there would undoubtedly be conflicts between the counties, the Legislature and Executive Branch if traditionally State functions were delegated. This would possibly extend to special interest groups if there were a lessened statewide presence or a feeling of being less influential with county groups than with state agencies and officers.

Political Acceptability

Since the planning and management process is part of a political process, it is incumbent upon staff and consultants to make a reasonable attempt at estimating the political acceptability of organizational options. In other words, without attempting to second-guess elected officials, we should be able to appraise the dimensions of the political factors. Given the colorful and dynamic political context of Hawaii, this is most difficult.

In our opinion, for many of the reasons stated above pertaining to conflicts generated, we believe that Option I-EXAGN and Option II-NEWDIV

would be the most acceptable options in a political sense. The Legislature and Governor, in fact, have already so stated the acceptability of DPED as the lead agency by previous legislation and orders. While there might be some resistance to a new division, it does not appear to be major. There might be county opposition to any continued state presence in coastal zone activities, but that appears to be a set of reconciliable differences

There would be much political opposition to the remaining three basic options. Option III-NEWDEP would clearly be unacceptable politically. In fact, there would likely form a coalition of legislative, bureaucratic, and civic leaders in opposition to a massive reorganization of state government for CZM Program purposes solely. Option IV-OFFGOV could be unacceptable to many legislators on the grounds of placing too much additional political power in the Governor's Office. Indeed, it has been brought to our attention that the Governor is opposed to creating such an agency in his office, and he would prefer an existing department to handle the CZM Program. The Option V-LOCAL might be acceptable politically to the counties yet unacceptable to statewide political leaders who would question decentralization of political power--this seems apparent. Yet even this merits debate since most county leaders do not oppose state government but would prefer to have more influence with it. If the State got out of the coastal zone business, unlikely as it seems, many county leaders would oppose having to assume such major new responsibilities. Thus, these are tentative assessments, but the obvious in politics is never static. What appears reasonably assured is that the incremental improvements approach or the compromise position tends to be politically acceptable.

Financial Feasibility

In the sense that an organizational option would have to be funded by Section 306 and State funds, there would have to be a qualitative dimension for financial feasibility. This means that there would be a qualitative perspective to the costs previously estimated for the basic options. The qualitative goal would be to develop an organizational arrangement that would be financially feasible in the political and social sense of being not unrealistically expensive. Thus, our qualitative sense here is an extension of political acceptability.

We believe that Option I-EXAGN has the lowest cost for a minimal level of performance and is quite feasible financially. Option II-NEWDIV will cost more, as noted, as will Option III-OFFGOV, and hence will be somewhat less attractive. Option III-NEWDEP will be the most expensive with the least understood effectiveness, and we believe it to be questionable in financial terms. Option V-LOCAL remains an enigma since it could range from little to total assumption of all funds. Because of this, we rate it less acceptable than Option I.

While this sort of subjective evaluation can be made, we must restate our earlier warning that little is really known about the effectiveness versus the costs of any option. Effectiveness can only be a measurement of performance which must be weighed against costs. While it is sound political economics to get the lowest bid for any public service, there are numerous cases where the cheapest alternative does not meet the standards of public demand for services, and hence, cheapest is not always best.

Flexibility

There is a need in any organizational structure for flexibility in terms of a capability to change with the times and shifts in national priorities. There is a continual flow and ebb in federal interests in such areas as the coastal zone. Right now we are experiencing a great deal of federal concern for the CZM Program which leads to a consequent increase in state interest. But what would happen if national priorities changed and few funds or programs were available for coastal zone activities? The organizational structure would have to be flexible in terms of personnel, methods, and procedures to adapt to the changes over time.

Given the inherent nature of government to be slow to change, even when pushed by national trends and forces, we believe that any of the options will have some inflexibilities. None of the options can be taken outside of the context of Hawaii State Government and presumed to have a proclivity for rapid change--indeed the very use of the term institutional arrangements implies a somewhat permanent status.

We do believe that Option I-EXAGN and Option II-NEWDIV have the highest flexibility amongst the five options. Option III-NEWDEP would have the least since its very nature is that of a new, permanent institution. Option IV-OFFGOV has little flexibility since the only way it can change is to get out of the Executive Office or assume a new role and set of responsibilities by virtue of an Executive Order. Option V-LOCAL has little flexibility in that it would lead to a flow of responsibility away from the state and increasing responsibility on the county planning departments to fix the functions in an organization.

Communications

The history and contemporary setting of our nation demands that governmental agencies provide full ease of communications with other governments, groups, and individuals. This becomes a specific goal of the CZM Program to allow full communications mechanisms for inter-governmental coordination, information exchanges, and public access to information, research, and records. In addition to this goal, there are a large number of federal and state laws and regulations which both guarantee public access and safeguard the privacy of citizens.

In reality we believe that any of the organizational options would allow for a reasonable flow of communications. That is variable depending upon the idiosyncracies and styles of elected leaders and appointed public servants at any point in time, but there are many administrative and legal remedies for dealing with willful malfeasance.

We believe that Option II-NEWDIV and Option III-NEWDEP have somewhat higher potentials for communications flows. The reasoning is that both would involve new personnel and resources for specifically that purpose. Option I-EXAGN would not necessarily allow for new efforts in this area. Option IV-OFFGOV would be highly politicized by nature and might have to cast communications in a favorable light for the chief executive. Option V-LOCAL could be more than adequate, but there is a built-in State-County friction in this option that might restrict statewide communication flows unless specifically required by the state lead agency—it could raise conflicts over information access.

Participation

The CZM Program requires that the full opportunity for citizen

participation be allowed during the formulation of the management plan. The law is somewhat vague on the role of citizen participation in the Section 306 implementation phase. We assume, however, that a sound PA/I Program should be maintained and improved upon into Section 306 as well. Therefore, an important qualitative variable is that the openness and opportunity for PA/I is available without sacrificing the leadership and innovative roles required by lead agency officials. This variable is related closely to the communications variable in that information is the essential requirement for good participation.

We believe that every option would afford a minimum PA/I potential to meet federal requirements, but believe that Option IV-OFFGOV would be most limited. The reason is not that the chief executive would not want PA/I, but the staff would have to concentrate its time on coordination within a politicized framework. Its resources and energies would be directed in that direction rather than towards a major PA/I effort. Both Option II-NEWDIV and Option III-NEWDEP would have a potential for a significant PA/I program since both would be new entities without historical impediments or restraints. These two options would provide also the likelihood of both staff and resources for a PA/I program with substance.

The Option I-EXAGN would most likely not have a major new staff or resources directed towards PA/I, but it could probably deliver a good program. Option V-LOCAL could lead to problems, however. While a basic argument is that this option brings government "closer to the people", and hence it would enable greater participation, there is some debate on the point. The debate centers upon the participation that would be available

to statewide groups with environmental concerns as well as others. Similarly, there is debate in Hawaii as to whether or not developers and big land-holding companies exert greater influence upon local officials since jobs and economic development are placed in conflict with environmental protection. The argument by environmental groups is that there are too many pressures upon local officials for the former, and they cannot always give equal weighting to environmental group concerns. There is much more that needs to be said on these issues, but there is at least a question as to how statewide environmental and economic development groups would fare in Option V that merits debate.

Group Dynamics

This qualitative variable has to do with the spirit of an organization. In other words, which of the options will have a high probability for generating an esprit de corps, loyalty, commitment, and team effort. This is not to say that organization alone is the compelling factor, but it would seem that differing organizations would affect directly this spirit.

Within the Hawaiian context, we believe that the group dynamics of Option II-NEWDIV, Option III-NEWDEP, and Option IV-OFFGOV would be the best. This is because the first two involve an entirely new structure which has great potential for a good spirit, and the third involves an excitement of being near a head of state.

The Option I-EXAGN could have a lesser spirit than the above if there were no separate identity available to the CZM Program and staff. In other words, if Option I-EXAGN involved no reorganization and means of determining the significance of the CZM Program, the group dynamics could be impaired.

Option V-LOCAL could have mixed effects on group dynamics. It is certainly plausible that morale and spirit in the county planning departments could be uplifted by transference of CZM duties to them. On the other hand, there would be a demoralization and lessening in spirit amongst the several state agencies' staff. There could arise a low morale among state officials who could detect a decreased statewide commitment to coastal zone activities and become somewhat frustrated in their roles of trying to coordinate federal and county programs with limited state roles.

Goals-Achievement Matrix

The various dimensions of the above qualitative variables can be summarized in a matrix using the options as a horizontal scale and goals statements as a vertical scale. These goals are basically restatements of the intuitively obvious advantages of each qualitative variable.

We have chosen to use a three part measure of likelihood of goals achievement. The three categories are as follows:

SIG	Significant probability of achieving goal
MOD	Moderate probability of achieving goal
LIM	Limited probability of achieving goal

The goals-achievement matrix presented in Table 11 is in essence a recapitulation of the discussion. The various points made above have been categorized using the three part categorization.

Goals	Option I EXAGN	Option II NEWDIV	Option III NEWDEP	Option IV OFFGOV	Option V LOCAL
1. To minimize conflicts generated.	SIG	SIG	LIM	MOD	MOD
2. To be acceptable politically	SIG	SIG	LIM	LIM	LIM
3. To be feasible financially	SIG	MOD	LIM	MOD	MOD
4. To allow organizational flexibility	MOD	MOD	LIM	MOD	LIM
5. To allow full communications	MOD	SIG	SIG	MOD	MOD
6. To provide ample opportunity for PA/I	MOD	SIG	SIG	LIM	MOD
7. To provide good group dynamics	LIM	SIG	SIG	SIG	MOD

Table 11-- Goals-Achievement Matrix for Qualitative Variables

Recommendations

Based upon our synthesis of all of the above variables and analyses, and using our best professional judgement and considering the Hawaiian setting, we are prepared to make the following set of recommendations for consideration and feedback.

1. We recommend that the Governor designate DPED as the CZM Program lead agency for Section 306 implementation and propose the creation of a new Coastal Zone Management Division within the DPED.

The overwhelming body of evidence suggests that DPED is doing the best job possible for the CZM Program and should be given the permanent responsibilities and organization as shown in Figure 6. The proposed CZM Division of DPED would work closely with counties especially through the county liaisons (in essence, creating a partial pass-through). It should serve as technical staff to a policy board as well as provide support services and leadership for the organizational network of intergovernmental arrangements. Furthermore, we wish to note that the increasing complexity of both coastal zone and marine issues might become sufficiently complex that a future government may wish to consider a new departmental organization, thereby viewing the CZM Division as a transitional arrangement. We believe, however, that this large scale reorganization may not be necessary for the next decade or so. In essence, then, we recommend what may be considered as an alternative mix of Option I-EXAGN; Option II-NEWDIV; and Option V-LOCAL with a long term contingency for Option III-NEWDEP. For a host of political, administrative, and managerial reasons, perhaps

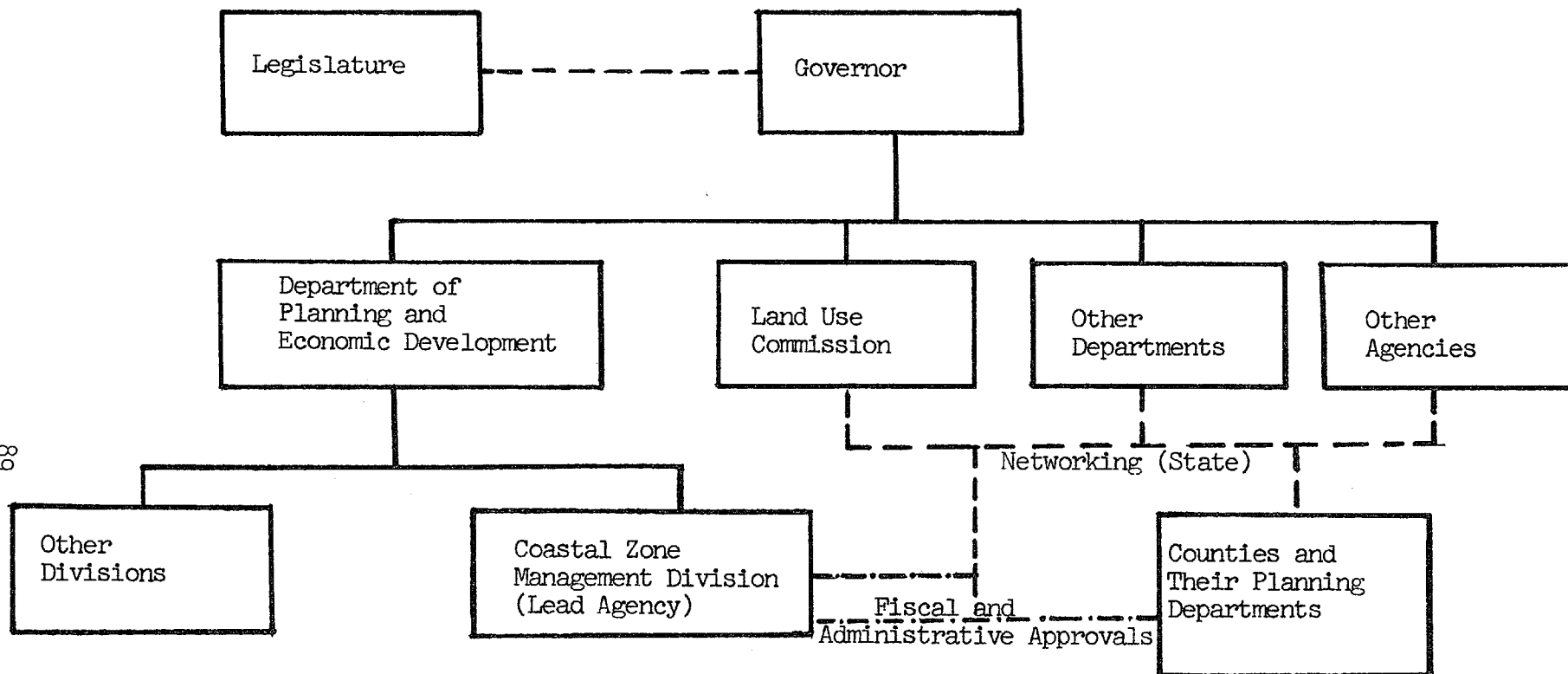


Figure 6 -- RECOMMENDED ORGANIZATIONAL STRUCTURE

indigenous to Hawaii, Option IV-OFFGOV has little likelihood of feasibility.

The obvious question arises; what of the other agencies? This is particularly germane to the Department of Land and Natural Resources which formally requested consideration as lead agency in a letter to Mr. Hideto Kono dated 16 January 1976. The compelling reason for not recommending DLNR is the peculiar multi-executive organization of that agency; for example, it is headed by a Board and run by the Board Chairman. It is believed that a strong single executive agency would be better for the CZM Program. Furthermore, the DLNR currently is considering reorganization of its six divisions and may be changed shortly--this may be affected by recommendations from the Governor's Blue Ribbon Reorganization Commission which is known to be concerned with DLNR reorganization. In other words, there is a sense of change in DLNR which may or may not evolve for the best interests of the CZM Program--it is uncertain at this time. While DLNR is clearly a land and resources management agency, and while it has a role to play in the CZM Program, it has severe personnel shortages that currently effect its ability to carry-out existing mandate. It may be better to designate DPED as the lead agency with a clear understanding to help with personnel financing in DLNR where possible. A final reason appears to be political acceptability. Based on the best information available to these consultants, the political acceptability of designating DPED as the lead agency is higher than that of DLNR. None of this is meant to criticize DLNR and its mission--rather we seek to present our rationale for our recommendation.

No other agency in Hawaii's present organization appears to have the wide range of planning and management capabilities to implement such a broad program as CZM. Of course, there are major regulatory functions in

other agencies that are crucial to the CZM Program. The DPED should not seek to acquire these programs since they are so complex and specialized—the possible exception being the designation of new areas of particular concern. Rather DPED should rely upon the networking concept and state planning process to coordinate the regulatory functions. This is the essence of why Hawaii is unique as an island state with a coastal zone that effects many agencies and regulations. We have long argued that the coastal zone may be "over-regulated" in Hawaii and that greater achievements may be possible by coordinating regulations within a state planning process than attempting to create a new super-agency with regulatory powers. DPED can work with DLNR, DOH, DOT, OEQC, and the host of state, federal, and local agencies with regulatory powers, without seeking to take over those powers.

DPED has many programs that are essential to success of the CZM Program in the Hawaii context. As we have noted elsewhere, Hawaii has one of the best state planning and land use control systems in the country, mostly implemented through DPED and the LUC. DPED maintains the clearing-house functions of A-95 and relevant aspects of A-85. DPED implements the 701 Comprehensive Planning Program and develops the State Plan (Act 189). The DPED also develops the capital improvements program which must be based upon the policies and guidelines established by the State Plan and within the state planning process. With such an array of major planning and management responsibilities affecting the entire spectrum of Hawaiian state government; and given the unique role that state planning has played in the history and contemporary setting of Hawaii; it is very clear to us that not only would it be the most logical lead agency for the CZM Program, but it will be the optimal agency for Section 306 funding.

2. We recommend that a policy board be empowered for DPED's role in the CZM Program and believe that the State Plan Policy Council could fulfill the need.

The SPPC has been created with most of the authorities needed for policy formulation and conflict-resolution for statewide planning. It seems logical to us that these authorities could be extended to encompass CZM activities. It would also help to better relate CZM activities to the State Plan. The SPPC also could designate APC's and develop the needed organizational network for each as is developed in companion studies (esp., Mandelker).

Some obvious questions may arise, including why not another policy council? The LUC could be considered a candidate, but it has been historically a land group with little water duties. Furthermore, the reorganization and recasting of the LUC into a quasi-judicial forum by the 1975 Legislature would make any service in policy formulation for the CZM Program somewhat inappropriate---indeed this could be challenged in the courts. The Board of Land and Natural Resources (that governs DLNR) might be a candidate, but it is already concerned with a myriad of responsibilities pertaining to DLNR. The weight of evidence suggests that it would not be able to devote the effort required for the CZM Program policy-formulation responsibilities. There does not appear to be any other existing state policy board that could fulfill this function. It could be argued that a new board should be created. This board should include the heads of the county planning departments, since they will fulfill the local role, as well as the heads of the major state agencies with regulatory powers in the coastal zone.

Since these people are already members of the SPPC, one must question the logic of recasting the same set of people for CZM purposes, especially since the SPPC already exists.

Another question has been raised as to the value of having elected officials rather than appointed officials serve as the policy board, as is argued in many HUD and DOT programs. The reason that this question may be moot in Hawaii is the strong, centralized executive role. The Governor appoints all cabinet officers and all members of policy boards in Hawaii (only the Board of Education excepted), which is quite unlike many other states where these officials are elected. The Governor and Lieutenant Governor are the only executive officers elected statewide which makes for a unique situation. Therefore, it is not appropriate for Hawaii to have elected officials only on the policy board since they would all come from the Legislature or county councils which would be the final decision-makers anyway. Finally, there does not appear to be any language in the CZM Act or Rules and Regulations requiring elected officers to serve on CZM policy boards and one must wonder about the relevance of the question to begin with. In our opinion, the Hawaiian context does not require exclusively elected members for the policy board nor should Hawaii be compared with other states in this regard.

Having said all this, we do not believe that the SPPC is the only solution for a policy board and designating body of APC's--rather we believe it is the best approach without creating a new board. It is certainly possible to create a new board, which would most likely be an expanded version of SPPC, but we wonder why that is necessary. If it is not possible to use the SPPC or create a new board, then it might be

possible to use the LUC, but that would probably require substantive legislative changes. We feel simply that the SPPC is the most logical and conflict-free group to serve as the CZM policy board. Indeed, in the Hawaii case it is appropriate for a group of state agency heads with regulatory responsibilities and county planning directors with regulatory responsibilities to formulate policies and designate APC's in the coastal zone, although we can understand why such a system might not work in other states. If all else fails, and the SPPC is unacceptable to the Federal Government as the group to designate the APC's, then the Governor could actually designate these areas upon Board advice. We believe that asking the Legislature to designate APC's would involve already overworked elected leaders in matters of administrative detail rather than broad policy mandates. It would undoubtedly be cumbersome and painful if we are to learn from the Kakaako experience of 1976.

3. The capabilities of the DPED and other agencies in the network should be augmented and improved.

The proposed CZM Division of DPED will have to be a capable, well-organized component of State Government if it is to be successful. That will require experienced, effective leadership and loyal, well-qualified professional and technical staff. Similarly, there will be a need to develop the capabilities and competencies of professional, technical, and field inspection staff in other state agencies involved in the organizational network as well as in the counties. It is our belief that Section 306 funds can and should be used for these purposes.

After the third year work is completed, and the management program accepted by the Secretary of Commerce, it is clear that funds should be

used primarily for development of state and county staff in order to build a solid institutional capability. Consultants should be used only for highly specialized purposes requiring unique expertise and national reputation. Consultants should not be used as a surrogate for building a core staff (we mean consultant in its normal sense here and not in the sense of an individual who works for DPED on a contract rather than as part of the Civil Service). In other words, we believe that the proper role of consultants is to provide highly responsible, technical advice once the CZM Program is established and on-going; not to serve as staff supplements or substitutes.

In the third year, a great deal of detail must be formulated pertaining to the proposed CZM Division and DPED lead agency status. For example, internal organization and staffing; including personnel requirements, qualifications, job specifications, salary levels, and duties, will be developed. Similarly the networking must be operationalized which require third-year formulation of the web of agreements, arrangements, and orders between DPED and other agencies. This would include a formalized working relationship with the county liaisons. The funding program of the CZM Division and other fiscal questions will be examined as well, and any needed legislation to create and enable the Division must be written.

Chapter III

Organizational/Institutional

Arrangements and Networks

Chapter III

Organizational/Institutional Arrangements and Networks

A significant distinction of the Coastal Zone Management Program is its process orientation for implementation of policies. Most similar federal programs, in such areas as housing, land use, pollution abatement, and others, have tended to be plan-oriented programs. In other words, previous federal efforts at the state level have been viewed as implementation of specific plans rather than an on-going process of policy effectuation. While Section 305 is viewed sometimes as a "planning" program and Section 306 is seen as an "implementation" program, a more thorough analysis shows that planning is inherent to both sections and continues beyond the acceptance of a management plan. The on-going funding capabilities of Section 306 grants is a unique mechanism in which theoretically-sound concepts of continuing planning; policy formulation, effectuation, and evaluation; and a process of management of coastal land and water resources are made possible.

A crucial key to this process is the web of interrelationships between the state lead agency and federal, local, and other state agencies needed to effectuate the policy recommendations emanating from the Section 305 technical work. Since our analysis has shown that a complete centralization of all relevant programs in a single state agency is quite impossible, it becomes clear that the essence of the success potential lies in the network of organizational and institutional arrangements, agreements, programs, and laws. The articulation of the concept of networking by Timothy Alexander and others is germane for the Hawaii CZM Program.

State Organizational Network

There seems little doubt that the CZM Program is to rely upon the state as the keystone of the intergovernmental organization. The state must provide the basic objectives, policies, and standards to guide public and private land and water uses in the coastal zone. It is the state as well that must assertively lead the efforts for intergovernmental cooperation, coordination, and integration of relevant views, interests, and activities. While the CZM Act recognizes that there are many alternative ways to achieve this, and while few states have had as much state centralization as Hawaii, the crux of the matter lies in the effectiveness of the state lead agency and its organizational Network.

The proposed CZM Division of DPED must develop an adequate set of organizational arrangements which will achieve this network. This should be incorporated in principle into the legislation that creates and grants authority to this division. Much of this authority is "in-place" through the gubernatorial designation and legislative act that designate DPED as the lead agency for the Section 305 program development. It does not appear that much in the way of major change in the existing legislation is really needed. Instead, the essence of the new legislation should be to grant a lead agency permanence to the DPED; create the CZM Division, and make explicit the authority to take a lead role in the formation of the organizational network. The specific requirements for fiscal and administrative controls required in the CZM Act (Section 305.c.5) already exist and should be continued.

There are three components to the organizational network of the Hawaii CZM Program at the state level.

1. The Governor should designate and the Legislature should create a new CZM Division in the DPED. This should be the lead agency for the on-going Section 306 funding as well as the lead agency for networking. Functional planning and most regulatory functions will continue in the current (and reorganized) agencies, but the DPED should designate ways to improve operations in the coastal zone.

2. The so-called "full authorities" requirement of the CZM Act by which the State must demonstrate the full range of controls for wetlands, recreation, water quality, siting, flood plain management, growth controls, agricultural lands, etc., is to be met by a series of interagency agreements and referrals. The principle coordinating tools are to be the CZM Program itself, as well as the capital improvements program, state plan, 701 program, and A-95 program already located within DPED.

3. The form of the organizational networking shall be a complex of interagency agreements backed-up by gubernatorial executive orders where necessary and appropriate. This is deemed proper in Hawaii due to the strong executive system and the policy role enjoyed by the Legislature. These interagency agreements and executive orders shall encompass a host of regulatory powers of various state agencies as well as HEPA. Indeed Hawaii may be far ahead of many other states in this regard since the Governor and Legislature have long insisted on such a network as an on-going component of the state planning process as well as statewide land and water use controls.

There are many specific examples already in place. The Land Use Commission, for example, already has a complex but effective web of

interrelations with DPED for staff analysis, planning policy consistency, and coordination. Even though an independent agency, the LUC is closely intertwined with the lead agency responsibilities for the CZM Program. On the water side, very sound networking exists with the Department of Health especially with regards to the Section 208 Program and related parts of the Clean Air Act and Federal Water Pollution Control Act. Similar arrangements have existed with the Office of Environmental Quality Control and its programs related to the NEPA. Many of these network components are quite explicit and even described in relevant legislation and rule-making. There are other aspects, however, that have arisen through DPED representation on relevant committees and policy boards, as well as through staff interaction and referral (which should not be overlooked).

Other areas of the network will have to be developed more fully. This appears to be true for transportation and land and natural resources in particular. While the lead agency has many arrangements already in place with these two state agencies, there may be a need for a more explicit set of agreements pertaining to the coastal zone. This would be needed especially for ports and harbors, mass transit, and highways on the transportation side. The natural resources side would require especially an agreement to better coordinate the so-called "Reg. 4" delegation of land controls in the state conservation zoning district in the coastal zone.

Many issues come to mind pertaining to the state organizational network. A basic issue nationally has been the involvement of traditionally independent state agencies operating in the coastal zone. In Hawaii, the

most critical agency would be the LUC. Fortunately, as mentioned, an extensive network of arrangements already is working with this agency. Otherwise, there are relatively few independent agencies in Hawaii due to its historical degree of centralization and strong executive government.

Issues might be raised pertaining to the value of the executive order approach. In Hawaii, this approach is sound because of the strong executive system. In fact, the Governor and Lieutenant Governor are the only executive officers elected statewide, and the Governor appoints all department heads and executive department board members (except for the Board of Education). The budget is a strong executive document, and the Governor is responsible for its execution. In terms of organizational structure, there are many who believe that the governorship of Hawaii is the strongest in the country. These factors more than justify the reliance upon executive orders and interagency agreements as the elements of the networking. On the other hand, there may be some legislation necessary if the Governor is reluctant to act due to some conflict, but there is no such indication at this time. Similarly, the Legislature retains its rights to act when it determines some problem in the network, subject to the gubernatorial veto, of course.

For all of these reasons, there does not appear to be a need for major new legislation in the organizational network. Indeed, as stated in our first year report, Hawaii has more legislation than appears needed at present. While there are no apparent or discernible conflicts in the legislation, nor any conflicting rules and regulations, the major issue that the organizational network should address is the approval time at the

state level for developments. This is essential since there is some evidence that good developments are being discouraged because of the exorbitant time (and costs) involved in approvals. The organizational network might try to develop an incentive for good developments through a time reduction for approvals. In this manner, good, environmentally sound developments can be encouraged, while bad developments can be quickly stopped.

The single hearing for developments for state approvals is a short-term goal towards which the organizational network should be directed. In time, this should be extended to encompass both county and federal approvals and permits. The long range goal would be obviously the formulation of a single permit process for coastal zone projects. Recent experiences in the State of Washington, however, have shown this to be problematical, complex, and plagued with impediments. For these and more indigenous Hawaiian reasons, we see the single permits proven to be a potential in the long run.

State-Federal Arrangements

The networking for state-federal activities is both complex yet simplified in the Hawaii case. As discussed fully in the first year report, Hawaii's isolation by virtue of being an island state increases the remoteness of the Federal Government. The regional approach that has worked well for mainland states has mixed results for Hawaii's federal relations. While most federal agencies have west coast regional offices to service Hawaii, usually in San Francisco, several have found it necessary to have major Hawaiian offices. This is obviously the case for the

Department of Defense and component services. Such agencies as H.U.D. and H.E.W. have major Hawaiian offices. Yet D.O.T. and Interior, for example, have limited offices in Hawaii. Thus, in some cases, Hawaii officials see federal officials regularly, yet in others, there is much remoteness.

The unique Hawaii case requires special concern for federal-state activities. This is why the Federal Agency Contacts is considered as an integral part of the network. These contacts will have to meet regularly to enable the kinds of review required by the CZM Act. While the CZM Program does not require a formal set of organizational arrangements, procedures, and understandings at this stage of the development, it is important to consider this a long-run intent. The most important set of arrangements should be made with the military, especially, the Navy. This is essential because of the major military presence in Hawaii, and even more so due to the major military uses in the coastal zone. While there is some debate on the "exclusivity clause," there appears to be a willingness by the military to be a good neighbor and cooperate with CZM officials. This is not new to Hawaii which has enjoyed many cooperative efforts such as Project FRESH to plan for shared uses of military facilities. Nagging problems remain such as Fort De Russy, Pearl Harbor, and Kahoolawe, yet these problems have varying levels and periods of intensity. It is premature to attempt a formal set of networking arrangements with the military now, but that should be done in the long-run.

One immediate source of investigation should be a better working relationship with the Corps of Engineers in the implementation of navigable water permits under the so-called Section 404 and Section 10 decision-

making powers (see Appendix A Case Study). Robert W. Knecht has advised DOD of the support of his agency for the Louisiana proposal to unify federal and state permitting procedures and develop a joint permit processing agreement between the Corps and the CZM lead agency for activities in navigable waters or ocean waters. The agreement would be "unsigned" until the CZM Program is approved by the Federal Government at which time it would be signed and made formal. The obvious benefit would be a major coordination of Corps permitting with the CZM Program. We recommend that a similar yet Hawaiian version of such an unsigned agreement be explored as soon as possible. It would resolve many of the problems that now exist in Hawaii as discussed in Appendix A.

The consistency provisions of the CZM Act also have networking implications. We recommend that the first projects of the proposed CZM Division of DPED include drawing a set of operational guidelines modeled closely along the lines of those used by the Department of Ecology, State of Washington (see draft in Appendix B). These guidelines make clear that it is the state lead agency which makes the initial determination of federal consistency with the CZM Program. It establishes a process of negotiation by key representatives of relevant federal and state agencies in a forum for conflict-resolution when differences arise. It also uses the good offices of NOAA to seek accommodations. These steps are intended to avoid taking such conflicts to federal courts. The key element in these procedures is the CZM Program itself in conjunction with the regular A-95 process of prior notification and review (and in some cases, A-85). Clearinghouses are established throughout the State on a regional basis

which are used to collect and disseminate information. Such a role could be played by the County CZM Liaisons in Hawaii. Thus, the network of lead agency determination, A-95 review, clearinghouse functions at sub-state levels, and A-85 review of regulations is one of great simplicity and elegance that could work in Hawaii to determine federal-state coordination and consistency. The Washington State model of simple guidelines in a question and answer format might be usefully modified to fit Hawaii's needs.

Hawaii has many existing tools in its network already, such as A-95, NEPA, HEPA, 701, and CZM through the Federal Agency Contacts. It may well be that the suggested development of operational guidelines to coordinate these activities may be adequate, per se. If problems do arise, it may be interesting to consider the Rhode Island Coastal Resources Management Program's model of the issuance of a certificate of compliance. In this model, the CZM lead agency, utilizing A-95 especially, evaluates federal developments, activities, and licensing/permitting, where not excluded, for formal compliance with the CZM Program. If the final development, activity, or license/permit is in compliance, the certificate is issued by the lead agency. When inconsistency is found, the lead agency seeks mediation, as well as the assistance of NOAA's good offices. In the event of non-resolution of conflicts, the certificate is not issued and the federal agency involved is notified that the application may not be funded under provision of Section 307(d). Such a system will obviously have to be tested at some point in the federal courts.

Some issues of much controversy for mainland states have little relevance for Hawaii. This is clear with energy facilities siting, for

example. There is the possibility of an off-shore energy facility, and there is the possibility of power plants or refineries being proposed in the coastal zone. There is also the possibility of OTEC or the off-shore thermal energy conversion facility that will use differing temperatures of the ocean to produce power. Most of these issues, however, are well-known and widely examined in Hawaii. Much of the trauma associated with mainland facilities, let us say the Turkey Point Nuclear Power Plant in Florida, for example, are not found in Hawaii. It seems quite clear that Hawaii's major energy problems will be handled by conventional facilities rather than nuclear for the foreseeable future. Most of the issues have already been debated in the coastal zone.

The proposed CZM Division of DPED will have to work closely with the FAC and the federal agencies to consider and develop the modifications, refinements, and improvements to federal laws, policies, and programs. The varying levels of national interests and priorities will effect the evolving CZM Program. This is one additional reason for regarding planning as continuing into Section 306.

State-Local Arrangements

To reiterate a point made several times in this report, Hawaii is unique among the states in terms of its governmental structure and tradition. Nowhere is this more apparent than with state-local arrangements. Recalling that Hawaii was a monarchy less than 80 years ago, and that a strong territorial and state government followed, it is not difficult to understand why such fiercely local governmental functions on the mainland as education are state functions in Hawaii. In fact, there are only four

true general-purpose local governments in Hawaii--the Counties of Kauai, Maui, Hawaii, and Honolulu. The State through the LUC controls all land use designations and has the lead role in water control through DOH. Thus, it would be inappropriate to argue for patterns of state-local arrangements that were designed for mainland states with weak state level executives and strong (and numerous) local governmental units.

Having said this, we still recommend a substantive and significant role for the four counties, through their planning departments, in the CZM Program. There are several reasons for this. The counties have gained considerable and valuable experience in fulfilling the interim coastal protection program known as the Shoreline Protection Act of 1975. They have established processes and procedures for dealing with developments in the narrow shoreline strip defined in the law. Coupled with the continuing development of good planning programs at the county level, and the increasing capabilities in land use planning and zoning (within the Urban District designated by the LUC), there is sound reason for county roles in the CZM Program.

The state-local network of arrangements should be formalized by a written agreement between DPED and the counties. Included in this agreement is some sort of continuation of the shoreline permitting process established by the Shoreline Protection Act but consistent with the statewide policies plan. An agreement would be preferable to legislation, but since the SPA expires upon completion of the State CZM Program, it may require some legislation. This is related closely to the on-going work of the LUC and the emerging DPED-DOH relationship for the

Section 208 Program. Similarly, this is related to the A-95 Program for Honolulu since the City and County performs local reviews and notification.

It appears wise to continue the funding and role of the CZM County Liaisons, those resident officials of the CZM Program, in order to provide the necessary physical presence and daily interaction. Much of the initial confusion over responsibilities, chain-of-command, and performance expectations appear to be generally resolved for the moment. Assuming that a similar, more permanent set of responsibilities can be negotiated between DPED and the counties, and that appears quite feasible, the County Liaisons can fulfill the true need for on-going coordination needed in the network.

The counties should be delegated some roles by DPED in the CZM Program. Whatever sort of single hearing/single permit, or some kind of permit consolidation, may occur, the county could perform a major role—indeed, it may hold the hearing and serve as a clearinghouse for a certain class of developments that are less than statewide in significance. A detailed classification of developments, as well as some activities, permits, and licenses, should be developed and assigned to either DPED or the counties. This assignment could be negotiated and could be done without new legislation for purposes of the long run permit process consolidation. DPED will have to retain authority to intervene in some cases in order to meet the requirements of the CZM Act for administrative and fiscal approvals. Yet, it appears that delegation of responsibility for hearings and permit clearinghouse functions is desirable for clearly local matters.

Many of the other agreements that would be necessary for the networking are already in-place. For example, the county planning directors already are members of important policy groups for state planning, especially, the State Plan Policy Council and CZM Policy Coordinating Council. This ensures that the counties have regular input as well as voting on policy matters. Long-standing procedures for key land controls exist through DPED for the LUC, capital improvements, A-95, 701 Program, and economic development, and for water use controls through DOH and OEQC. The state-local network would incorporate, and perhaps improve upon, these existing arrangements.

The essence of the network for state-county arrangements will be to involve the counties in the CZM Program to a major degree yet retain mechanisms for land and water use control issues of statewide significance. This will not require new legislation except for the creation of the areas of particular concern mechanism and extensions of the SPA beyond the programmed phase-out. The intent of these recommendations is clearly to improve and develop a role for the counties while maintaining the integrity of DPED's statewide mandate.

Chapter IV

Public Awareness/Involvement

Chapter IV

Public Awareness/Involvement

In our experience, the Public Awareness/Involvement Program in Hawaii is one of the most extensive in terms of fulfilling the mandate of the CZM Act to allow the "opportunity for citizen participation." Few if any other states have a similar scale of opportunity for citizens to become involved in the CZM Program. Of course such a large involvement will bring controversy and conflict--any such gathering of human resources will be fraught with differing opinions. Yet despite the constant state of internal tension and creative conflict, Hawaii's CZM Program has developed a PA/I Program to allow citizen participation to occur. This is not to say that the array of groups is all that is needed--the average citizen is also to be reached. That is the more complex part of PA/I.

The DPED has formalized a structure for PA/I based upon many of our recommendations contained in the First Year Report. This Section 305 PA/I Program actually started during the proposal-writing stage. It offers the basis for a permanent PA/I Program, as well. The DPED has described the PA/I Program as follows.

Efforts to Date in Public Awareness and Involvement

The Coastal Zone Management Advisory Committee, which was formed to assist in the preparation of the FY 1974-75 application, was composed of nine technical and governmental representatives whose agencies and organizations were certain to be involved in coastal zone planning.

Prior to formation of this Committee, the DPED staff conducted in-depth interviews with governmental, university, and research persons and

others especially qualified in the planning and management of Hawaii's coastal environment. These interviews produced a wide variety of perspectives regarding the State's coastal zone problems, issues, and opportunities.

The FY 1974-75 application was also built upon a convergence of environmental planning work in Hawaii, much of which involved considerable public participation. Hawaii's Environmental Policy Act provides broad environmental goals for the State which set the framework for the previous application. This legislation was proposed by the Temporary Commission for Environmental Planning, a group comprised of governmental, public agency and voluntary sector representatives. The Temporary Commission was established at the request of the Environmental Council, an advisory citizen's body organized under the Governor's Office. The Environmental Council primarily provides liaison with the general public, solicits information through open hearings, and recommends environmental policy to the executive and legislative branches.

During FY 1974-75, several PA/I related actions were undertaken under the CZM program:

1. A major paper describing sixty citizen participatory and information mechanisms was developed by A.J. Catanese and Associates and some of the options utilized;
2. The organization of State and County Citizen Advisory Committees was initiated in cooperation with the County Planning Departments and the Governor of the State of Hawaii; and
3. Public informational meetings and hearings were held on the

designation of an estuarine sanctuary on the Island of Hawaii which enabled the CZM staff to obtain some indication of public and individual preferences and attitudes regarding environmentally sensitive areas.

In addition to these more structured activities, testimony was presented to the 1975 Hawaii State Legislature on the scope and status of the Hawaii CZM Program. Due to the vast media coverage that was received, this activity effectively served to generate wide public interest.

During the FY 1975-76, the public awareness involvement element of the Hawaii CZM Program was for the most part operationalized and has surpassed the minimal requirements of the CZM Act and its attendant regulations and guidelines.

The CZM Act requires participating States to hold public hearings during the development of their management programs. Sections 920.31 and 920.32 of the applying federal rules and regulations further suggests the establishment of citizen advisory committees and the cooperative dissemination and exchange of information between all interested private citizens, public agencies, and special interest groups.

Looking beyond these requirements, the major purpose of the PA/I element was to capitalize on the expertise of government and non-government persons and to achieve broad public acceptability and support for the CZM Program by involving all appropriate State, County, and Federal agencies as well as individual citizens and special interests groups by:

1. Informing, educating, and raising the overall public awareness with regard to CZM problems, issues and opportunities;

2. Facilitating discussion and dialogue between the public and DPED; and
3. Obtaining and considering public values, preferences, and priorities on the multi-aspects and alternatives of Hawaii's CZM Program, e.g., boundaries, land and water use controls, and organizational options and structures, and their resulting impacts.

It is anticipated that the fulfillment of this purpose will in the long run result in a generally more effective program.

The PA/I Program is conceptually structured to attain wide and effective coverage of public preferences and priorities within the constraints of the CZM Program's resources. Conceptually, the PA/I element is primarily based on the establishment and use of advisory committees. The media and other communication techniques will be primarily employed to support and reinforce this base.

In this regard, appropriate government agencies are represented on the Policy Coordinating Committee and Federal Advisory Contacts, while individual citizens and special interest groups appropriately participate in the public meetings and proceedings of the Statewide Citizens Forum and the County Citizens Advisory Committees. All of these bodies input directly to DPED which serves as the primary coordinator. It is believed that this PA/I program structure will allow DPED to obtain maximum coverage of Hawaii's diverse publics and their respective viewpoints. Figure 7 displays the array of PA/I groups for the Hawaii CZM Program.

An alternative to this PA/I program structure would have been an hierarchal organization in which County Citizen Advisory Committees would

Federal
Statewide

FEDERAL
ADVISORY
CONTACTS

POLICY
COORDINATING
COMMITTEE

STATEWIDE
CITIZENS
FORUM

DPED

Local

HONOLULU
CITIZENS ADVISORY
COMMITTEE

KAUAI CITIZENS
ADVISORY
COMMITTEE

HAWAII
EAST/WEST
CITIZENS ADVISORY
COMMITTEE

MAUI CITIZENS
ADVISORY COMMITTEE

MOLOKAI CITIZENS ADVISORY COMMITTEE	LANAI CITIZENS ADVISORY COMMITTEE
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Figure 7 - PUBLIC AWARENESS/INVOLVEMENT PROGRAM FOR HAWAII COASTAL ZONE MANAGEMENT PROGRAM

input directly into the Statewide Citizens Forum who would input into the Policy Coordinating Committee. DPED would then receive a single recommendation from the PCC. Although this would in many ways relieve DPED from the many conflicts arising from varying viewpoints, this approach is not desirable in that the various concerns and perspectives of the individual advisory groups may either be compromised or possibly disregarded. Since wide and extensive coverage of the multi-public concerns was desired, the former alternative was implemented.

The following describes and lists the advisory bodies organized to fulfill the objectives of the PA/I program.

Policy Coordinating Committee serves in an advisory capacity to DPED. The Committee is composed of representatives from the State Senate and House, the Land Use Commission, the four County Planning Departments, the City Department of Land Utilization, the Department of Health, the Office of Environmental Quality Control, and the Department of Land and Natural Resources. Its function is to address policy and technical concerns of the CZM program from a State and local government perspective and to inform their staffs on progress of the CZM program.

Federal Advisory Contacts provide technical assistance and advice to DPED and its consultants on various aspects of the program. They also provide input to DPED on an individual basis regarding related federal concerns, program review, and questions dealing with the siting of facilities in the national interest.

Statewide Citizens Forum includes members from various statewide interest groups as shown in Table 12. It is a representative body of many diverse and comprehensive interests. The primary function of this group

Table 12 -- Hawaii Coastal Zone Management Program Statewide
Citizens' Forum

Organizations Represented

Citizens' Advisory Committees for Honolulu, Kauai, Molokai,
Lanai, Maui, East Hawaii and West Hawaii

Alexander & Baldwin
Aloha Association
American Institute of Architects
American Institute of Planners
American Society of Civil Engineers
American Society of Landscape Architects
Amfac Communities
Audubon Society
Bishop Estate
Bishop Museum
C. Brewer & Company
Campbell Estate
Castle & Cooke, Incorporated
Chamber of Commerce of Hawaii
Common Cause
Congress of Hawaiian People
Conservation Council for Hawaii
Construction Industry Legislative Organization
Council of Presidents
Environmental Educational Association of Hawaii
General Contractors Association
Hawaii Carpenters Union
Hawaii Council of Dive Clubs
Hawaii Government Employees Association
Hawaii Hotel Association
Hawaii Marine Association
Hawaii Public Health
Hirano Brothers, Limited
Home Builders Association of Hawaii
League of Women Voters of Hawaii
Life of the Land
Mike McCormack Realtors
Oahu Development Conference
Outdoor Circle
Shoreline Protection Alliance
Sierra Club
Soil Conservation Society of America
Tax Foundation of Hawaii
United Public Workers
Windward Action Group

is to review the content and progress of the program and to determine citizen preferences and priorities from a statewide perspective.

County Citizen Advisory Committees are organized and serviced by the County Planning Departments and DPED. The purposes of these Committees are to review the content and progress of the CZM Program, to determine citizen preferences and priorities from a county perspective, and to advise DPED on the PA/I program as it applies to each county.

In addition to the use of advisory committees, various other techniques were employed to facilitate PA/I, such as the publishing of a DPED Newsletter and joint CZM/Sea Grant Newsletter; the release of newspaper articles; presentations to public interest groups; the distribution of CZM reports and materials; and the establishment of a CZM liaison at each of the County Planning Departments.

FY 1975-1976 PA/I activities of the CZM Program have primarily focused on the advisory bodies and have realized substantial progress in this area. Most of the citizen advisory bodies are now well past the initial stages of learning what the Hawaii CZM Program is about and are contributing substantively in many areas.

Preliminary Evaluation Observations

It is by far too soon to effectively determine the successes and failures of this PA/I Program. The full structure has been operating for less than a year and there is much more effort needed. Therefore, only some observations can be made at this time.

The biggest problem appears to be the demands for staff time and DPED resources versus the amount of money available. Clearly many laudable

demands have been generated by the various PA/I components, especially the citizens, for additional studies, mass media productions, program promotion, and staff work. Each of these demands is based upon thoughtful concerns. The limited funds available, however, make full implementation virtually impossible. More funding should be sought to fulfill those demands of the highest priority, however.

Since DPED staff, consultants, and PA/I participants all were undergoing a learning experience, there were underestimates made of the time and commitment required. This was frustrating to many participants. Having weathered this initial period, it is now incumbent upon DPED to provide leadership and direct the PA/I activities in the most efficacious manner. This should channel citizen energy into the most productive directions.

It is still unclear as to whether or not the average citizen is gaining knowledge of the CZM Program. Even this elaborate PA/I Program, or any other for that matter, will appeal to and attract the most concerned and interested citizens. The average person will live their lives of quiet desperation and perhaps not know of the CZM Program in-depth until their lives are affected directly. The challenge to the PA/I Program, however, is to represent a general citizenry as best possible.

Permanent PA/I Structure

The permanent PA/I Program, extending into Section 306 and beyond, will be recommended next year after evaluation of the current efforts. A few parameters are likely at this point. It seems clear that a more prescribed leadership role for DPED should be developed. Similarly, it appears that more reliance will be needed from the county committees as

CZM Program operations continue and the county role increases. The role of the PPC after a permanent policy group is formed also needs examination.

In general, there should be some streamlining and fine tuning of the PA/I Program. This will enable the required economies and efficiencies of Section 306 funding. It will also insure that the natural tendency of any organization to expand and increase functions will not divert funds from the crucial problems towards which the CZM Program is directed. Finally, somehow we must be better convinced that we are adequately hearing from the full citizenry and average person and not be surprised with news to the contrary at the final hearings on the CZM Program. This can be accomplished largely by DPED in its leadership role for PA/I to provide adequate information and communications to the general public in addition to its working with representatives of groups participating in the PA/I Program.

Appendix A

Case Study of the U.S. Corps of Engineers Permit Process in Hawaii's Coastal Zone

The involvement of the Federal Government in coastal construction and related activities is not new. The National River and Harbor Act of 1899 mandated responsibility and authority to the Department of the Army through its Corps of Engineers to issue regulatory permits for structures and other work that would affect or be in navigable waters of the country. The Marine Protection, Research, and Sanctuaries Act of 1972 extended the authority of the Corps permits to include the transport of dredged material for dumping in ocean waters working with criteria established by EPA.

The Federal Water Pollution Control Act Amendments of 1972 went even further. The Act prohibited any person or organization from dumping pollutants into any waterway unless such discharge has a permit issued by EPA or an EPA approved state agency. This permit is called the National Pollutant Discharge Elimination System (NPDES Permit). The NPDES Permit excepts single point source pollutant discharge of dredged or fill material. This type of discharge is subject to Corps of Engineers permitting under Section 404 of the Act where navigable or ocean waters are involved. Section 404 also requires that the Corps utilize guidelines established by EPA in the selection of these disposal sites and in the process used to issue the permits. In March 1975 the U.S. District Court in Washington, D.C., ruled that the Corps permits applied to all waters of the country—

a considerable expansion of the historical sense of "navigable waters." The Corps has issued interpretive regulations as a result of the decision and EPA has revised its guidelines. Nonetheless, the Corps will expand its authority over a two year period to comply with the ruling. The Corps permitting process will apply to all ocean, lagoon, primary tributary, marsh, wetland, beach, large lake (over 5 acres) and wetlands behind dikes by July, 1977.

The National River and Harbor Act of 1899, Section 10, requires a permit for structures or work in navigable waters. Now under Section 404, a permit from the Corps is required for discharges in two categories:

1. Discharge of dredged material:
 - a. Discharge of material dredged or excavated from any waters of the U.S.
 - b. The addition of dredged material to a specified disposal site.
 - c. The runoff of overflow from a contained land or water disposal site.
2. Discharge of fill material:
 - a. Placement of fill in construction of any structure in navigable waters.
 - b. Building of any structure of impoundment requiring rock, sand, dirt, or other pollutants.
 - c. Site development fills for recreational, industrial, commercial, residential, and other uses.
 - d. Causeways or road fills.
 - e. Dams and dikes.

- f. Artificial islands.
- g. Property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters and bulkheads and fills.
- h. Beach nourishment.
- i. Levees
- j. Sanitary landfills
- k. Fill for structures such as sewage treatment facilities, power plant intake and outfall pipes, and subaqueous utility lines.
- l. Artificial reefs.

The basic process can be diagrammed as shown in Figure 1 for Corps permits. It is with this process that the network for Corps, state and local arrangements is created. The process requires a timely and appropriate response from counties and state agencies in Hawaii that apparently is problematic.

Problem Statement for Hawaii

Based on a review of the relevant background materials, discussions with technical and legal representatives of the Corps, and preliminary explorations with representatives of various State agencies involved in the referral of federal navigable waters permit applications, the problem appears to be multifaceted. While there currently appears to be a lack of a unified and coordinated effort in State review procedures, the designation of a single State agency, with responsibility for synthesizing the comments of all other agencies involved review procedures, may hold only a partial answer

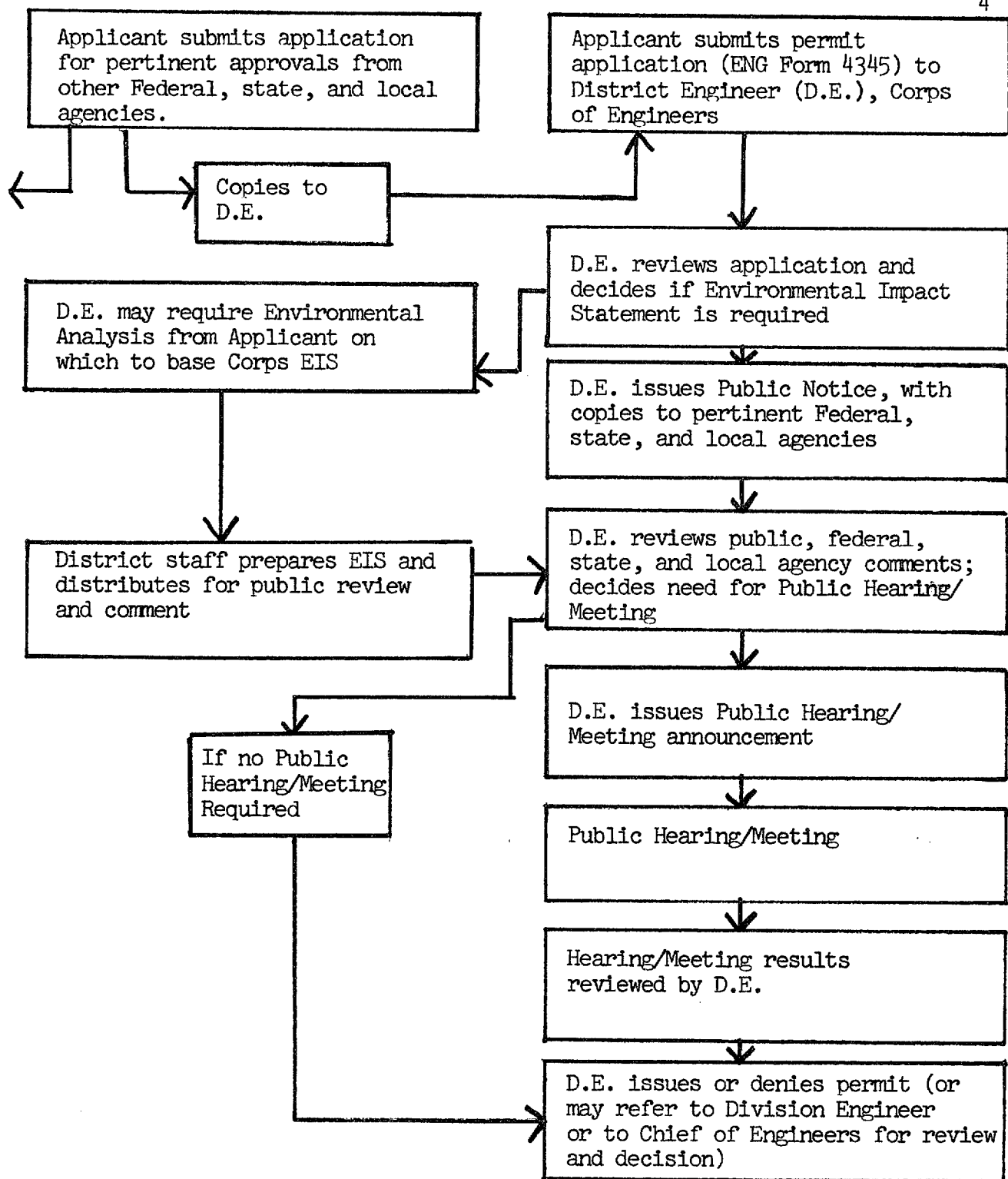


Figure 1.—Steps in Process for Corps Permits

to the identified problems. As suggested by comments of the representatives of the Corps, what is needed is a "facilitator" rather than a "synthesizer." In the process of summarizing or synthesizing agency comments into a single state opinion, much of the technical data critical to the decision by the Corps may become lost through amalgamation. Therefore, through whatever coordinative mechanism a State position is expressed on a particular permit application, all opinions (both positive and negative) should be stated, as well as a synthesis (summary) of views presented.

A second problem is the fact that many developments take place (including the building of structures) in navigable waters without permits! The representatives of Corps estimated that only 200 permits currently are on file with their agency, while many more should be. Most frequently, the initial point of contact regarding these developments (construction and improvements) is at the local level through a building permit or grading permit. There is no automatic referral system (or one-stop permit system) at present to ensure that these local developments receive proper attention at the State or federal level. Therefore, it is usually only the larger projects that come to the attention of the Corps. (However, as one discussant observed, the many small alterations to areas adjacent to navigable waters can add up to a significant resource management problem.)

Preliminary Review of Legislative Mandates

The problem is further complicated by the number of permits and "sign-offs" required within the State's navigable waters. The Department of Transportation (Harbors Division) maintains control over all developments in harbors and navigable waters. Therefore, a DOT permit is required. Under Chapter 266 of the Hawaii Revised Statutes:

The Department of Transportation shall have and exercise all powers and shall perform all duties which may be lawfully exercised . . . relative to the control and management of the shores, shore waters, navigable streams, harbors, harbor and waterfront improvements . . .

It is undoubtedly for this reason that the Department of Transportation was initially designated (June 1965) to be the principal agency to coordinate the State's response to public notices regarding federal permit applications. However, as representatives of the Corps of Engineers pointed out, the Department of Transportation frequently is a permittee insofar as the federal navigable waters permits are concerned. Further, it would appear from cursory review that the Department of Transportation is not properly equipped to coordinate the comprehensive review now required under more recently federal environmental legislation.

All navigable waters are located in conservation areas and thereby fall under the management of the Department of Land and Natural Resources. Accordingly, DLNR must issue a Conservation District Use Application (CDUA). Representatives of the Corps suggested that the CDUA permit should precede their Section 404 and Section 10 permits. The involvement of the Department of Land and Natural Resources in this permit review process appears to stem from several legislative sources. Chapter 65 of the Hawaii Revised Statutes provides authority to satisfy requirements of Section 6(c) of Public Law 93-205, also known as the "Endangered Species Act of 1973," thus involving the Fish and Game Division of DLNR. HRS Chapter 187 charges DLNR with the

. . . direction, and control of all matters relating to the preserving, protecting, propagating, importing and distributing of fish and marine life and game birds and game animals within the State and the waters subject to its jurisdiction, and the enforcement of laws relating to such work.

HRS Chapter 205 establishes the concept of conservation districts and delegates their governance to the Department of Land and Natural Resources, setting forth conditions to which these districts and subzones shall be subject, including:

- (1) compatibility and physical conditions and capabilities;
- (2) preservation of existing physical and environmental aspects (improvement and restoration);
- (3) use conformance with programs of appropriate Soil and Water Conservation Districts;
- (4) when provided and/or required, potable water supplies and sanitation facilities must have the approval of the Department of Health and Board of Water Supply where applicable;
- (5) when provided and/or required, boat harbors, docks, and similar facilities must have the approval of the Department of Transportation
- (6) construction, alteration, moving, demolition, and repair of any building or other improvements on lands within the Conservation District shall be subject to the building codes of the respective counties in which the lands are located.

Thus Chapter 205 provides the mandate of interlocking review and "sign-offs" among State agencies regarding developments within the Conservation Districts.

Finally, HRS Chapter 6 vests DLNR with powers to locate, identify, and preserve in suitable records information regarding prehistoric and historic sites, locations, and remains. Proposed construction or improvement in designated historical areas shall not be commenced until written concurrence has been secured from DLNR. For these reasons, federal permit applications are also subject to review and comments by the State Historical Preservation Officer within DLNR.

The Department of Health has jurisdiction over water quality standards and therefore, sign-off by DOH is also a prerequisite to federal permit issuance in navigable waters. As representatives of the Corps observed, however, the Department of Health sign-off is often after the fact; DOH needs to become more directly involved in the initial review.

Preliminary Assessment of Current Procedures

The following observations were made by representatives of the Corps of Engineers regarding the responses of various State agencies to the request for review and comments on federal permit applications for work in navigable waters:

- (1) Fish and Game Division--slow, not comprehensive in its input.
- (2) Land Management Division--little action.
- (3) Department of Health--getting better in coverage and response time.
- (4) Department of Transportation--frequently a permittee.

In general, DLNR may take up to six months to process a CDUA (as noted, this permit should precede Section 404 and Section 10 permits). Further, the Corps tend to receive summary position statements from DLNR rather than specific technical data.

The Corps seeks three basic types of information in the development of its decision regarding a permit application: (a) environmental data, (b) engineering data, and (c) political factors. A fifteen-day preliminary review is made to determine if an EIS or EIA will be required. If an Environmental Impact Statement is required, one additional year may be

necessary to complete the permit process. The Corps only holds public hearings by request.

In discussing these problems with various representatives of participating State agencies, the following observations were made. Mr. Sakamoto of the Department of Transportation strongly advocated a one-stop permit system as a means of affording greater convenience for the citizenry and ensuring automatic referral of these matters to appropriate county, state, and federal agencies. He suggested that this permit system might be most effectively tied to building and grading permit procedures at the county level. Such a one-stop permit system would trigger the involvement of other state and federal agencies as appropriate. It would be the agencies' responsibility and not the individual citizen's to ensure that the proper contacts were made and procedures followed. Multiple copies of forms could be filed from the central clearinghouse (county) agency. The citizen would be made aware of the "check list" of agencies from which "sign-offs" were required but would not have to "run all over town" to get separate forms processed.

Senator King was also strongly supportive of the "one-stop permit" system and the concept of the permit as a "triggering mechanism" for agency communication at various levels of government. She also suggested that such a system might be most effective if initiated at the county level.

Mr. Tagawa of the Department of Land and Natural Resources acknowledged that DLNR has been subject to much criticism for its lack of action in a number of areas. He suggested that the problem is one of adequate manpower; for example, the Division of Forestry has only one Forest Ranger and the Division of Fish and Game only eight wardens for all of Oahu.

Many new federal programs relating to the protection of the environment have increased manifold the expectations of state involvement in management and enforcement of regulations. However, the available manpower has not kept pace with these demands and expectations. There is need, Mr. Tagawa suggested, for a Conservation Enforcement Division within DLNR. Such a division would be the logical agent to coordinate the State's involvement in the federal permit application review process, he suggested, as well as administer a state permit system. He noted that a bill currently is before the Legislature to create such a division. However, DLNR support for this concept is not unanimous.

Available Coordinative Mechanisms

While OMB Circular A-95 may be interpreted as an appropriate mechanism for a more unified state review of federal permit applications regarding work in navigable waters, given the preliminary analysis of the problems as outlined above, it should not be viewed as a panacea. Whatever coordinative/management mechanisms are adopted, greater agency communications and "triggering devices" should be incorporated to ensure proper and adequate notification of all those agencies that must be involved at the county, state, and federal level. DPED should assume the lead role, utilizing the A-95 process as the appropriate mechanism for the review coordination, in conjunction with its CZM Program. Additional staffing will be required, however, to conduct this review in DPED and in other participating state agencies.

The issues surrounding the review of federal navigable waters permits represent a microcosm of the issues likely to be encountered in

the total CZM Program. It is unclear that these microcosmic issues can be effectively resolved until the larger issues surrounding the CZM Program are dealt with effectively. The "triggering mechanism" of a one-stop permit system, coupled with major and minor permit categories, seems to offer the most promising "solution" to these and other related issues.

Appendix B

D R A F T

O P E R A T I O N A L G U I D E L I N E S

For Federal Consistency

Hawaii Coastal Zone Management Program

Using Washington State's Model

Contents

- I. Consistency of Federal Grants
- II. Consistency of Federal Developments
- III. Consistency of Federal Activities
- IV. Consistency of Federal Permits and Licenses

I. CONSISTENCY OF FEDERAL GRANTS

1. What is a grant?

"Grant" refers to federal assistance to state and local entities.

2. What grants are subject to the consistency requirement of Sec. 307(d) of the Coastal Zone Management Act?

Grants subject to the consistency requirement include the following types of grants if the proposal may affect the coastal resources:

- Planning assistance to the state
- Grants and loans for coastal protection
- Grants and loans for stream modification, shore protection, or flood control
- Public works, ports, or industries
- Housing projects
- Purchase of recreational and wildlife areas
- Wildlife management programs
- Mining reclamation
- Transportation facilities
- Business loans

3. Who will determine if a grant is consistent, or subject to consistency?

DPED, on behalf of the State, will make this determination, including whether the grant project will have an impact on the coastal zone.

4. What are the duties of the federal agency?

The federal agency's responsibilities begin upon receipt of an application for assistance from a state or local entity of government. First, the federal agency must insure that the application has been circulated in accordance with the A-95 process. Second, the federal agency must check to see if the state's statement of consistency, or statement that the grant project is not subject to consistency, is attached.

5. How will the state become aware of grants subject to the consistency requirement?

Through the A-95 process.

6. What are the responsibilities of the DPED?

DPED will learn of proposals for federal assistance from local entities of government through the project notification process.

Requests by state entities for assistance are often not covered here. DPED will learn of these directly from the Planning Division, the clearinghouse for state proposals.

Upon identifying a proposal as being of coastal zone significance, DPED will review it for consistency. DPED's review will include contacting counties and other agencies for input, and evaluating the request in terms of applicable state laws and the policies and regulations governing shoreline management.

DPED will then prepare a statement of consistency, sending copies to the appropriate clearinghouse and to the applicant.

7. What if DPED says that the proposal is not consistent with the state's coastal zone management program?

The federal agency will not approve it. The only exception would be if the Secretary of Commerce finds that the proposal is consistent with the purposes of the act, or that the proposal is necessary in the interests of national security.

8. How will a federal funding agency know if a grant is subject to consistency, if no statement of consistency accompanies it?

All grant requests from state and local entities of government which are located in the coastal zone must have a statement regarding coastal zone significance. Most statements will be statements of nonsignificance-- in other words, the proposal does not have any apparent impact.

Because a statement by the state will accompany each grant proposal, the federal funding agency is freed of the burden of determining whether or not a proposal should have such a statement of consistency.

If by some mischance a proposal arrives at the federal funding agency without a consistency statement, the federal agency should immediately contact the DPED.

II. CONSISTENCY OF FEDERAL DEVELOPMENTS

1. What is a development?

The A-95 circular defines direct federal development as "planning and construction of public works, physical facilities, and installations or land and real property development (including the acquisition, use, and disposal of real property) undertaken by or for the use of the Federal Government or any of its agencies; or the leasing of real property for Federal use when the use or intensity of use of such property will be substantially altered." This is the definition accepted by the Hawaii Coastal Zone Management Program since the A-95 procedure will play an important role in consistency procedures.

2. Where must federal developments be consistent?

Sec. 307(c)(2) of the Coastal Zone Management Act applies to a federal development project in the coastal zone of a state. For the Hawaii Coastal Zone Management Program, this means any federal development fitting the direct development definition, which occurs within the first tier, will be subject to Sec. 307(c)(2).

3. Who determines whether developments are consistent?

The federal agency does. The duties of federal agencies are to:

- a. Make this determination with state involvement as a routine matter;
- b. Officially notify the state of this determination through the A-95 process; and
- c. Explicitly address the consistency of the proposed development with the DPED if a negative declaration or a draft environmental impact statement is made under the National Environmental Policy Act.
- d. Respond to any state requests for more information or comment on the proposed development.

4. How, specifically, does the federal agency make the determination?

The federal agency evaluates the proposed development against the policies, environment designation, and regulations of the CZM Program. The project is also required to be consistent with air and water quality standards and other pertinent state regulations.

If the substance of these policies and regulations is met by the development, the proposal is consistent.

5. How does the federal agency notify the state of its determination?

The most convenient and timely way is to use the existing A-95 system. In addition to the other A-95 information, the federal agency should include one of the following four responses together with other required disclosures on the A-95 application.

- a. "The development is not subject to the consistency requirements of Sec. 307 of the CZM Act of 1972."
- b. "This development is consistent with the Hawaii CZM Program."
- c. "This development is not consistent with the Hawaii CZM Program, but no practicable alternative exists to carry out the legal purpose for which the development is designed."

- d. "This development is not consistent with CZM Program but no practicable alternative exists to meet the national security need filled by this development."

The federal agency should also indicate the date by which it intends to make a final decision whether to proceed with the project.

While A-95 will provide the state with sufficient advance warning, the federal agency also can contact the state directly. The state has further opportunity to be informed through review of a negative declaration or a draft environmental impact statement submitted through the NEPA process, if that is required.

6. Suppose the federal agency is unable to make the consistency determination at the time of sending out its A-95 notification?

The A-95 notification should indicate the possibility of CZM relevance, and say that a consistency determination will be forthcoming. The federal agency should ask for state involvement in making the determination and send it to DPED as soon as possible.

7. What will the state do when it receives the consistency determination?

The state, acting through DPED, will review the proposal and in so doing will seek the views of other relevant state agencies, local governments, and other appropriate sources. The nature and conduct of this review will depend on the type and magnitude of the federal proposal.

If the state agrees with the federal assertion (that is, with whichever of the four consistency statements shown above is used), then nothing more will be done.

If the state does not agree with the federal determination, the state will notify the federal agency and arrange a meeting or meetings to seek resolution of any differences.

8. What will the state do if agreement with the federal agency cannot be reached?

The CZM Act provides no explicit means of resolution in the case of conflict over consistency determinations involving developments, so the state will:

- a. Drop the matter;
- b. Bring the matter before a mediation forum involving all key parties (such an informal body to be established);
- c. Seek the good offices of NOAA to seek accommodation; or
- d. Take the matter to federal court.

9. What will the state do if a federal agency starts a development without making a consistency determination or notifying the state of such determination?

If the state should learn of a pending federal development or one already underway (it usually will be virtue of NEPA, Federal Register, Section 10 Permit, citizen comments, or other means), and if the state believes this development to be subject to Sec. 307(c)(2), then the state will immediately notify the federal developing agency of this situation and request a determination of consistency.

At the same time the state will undertake to make its own determination and if the project is found to be consistent, the matter will end. If, however, the federal agency does not feel that the development is subject to 307(c)(2), or disagrees with the state's determination, the state will call for meetings to resolve the conflict. If the conflict cannot be resolved, the state will resort to one of the options described above.

10. How can after-the-fact claims of inconsistency by the state be prevented?

There is a time span between the federal agency's announcement of consistency and its final decision to build or not to build. The length of this time span depends on the various decision-making processes involved, and the various federal administrative processes that come into play. At a minimum, the time span should be the time needed to complete the A-95 process. A project of any significance will be lengthened by the NEPA process, Section 10, or others.

It is essential that a federal agency declare an intended decision date when it announces its intentions to undertake a development. This can be done by looking ahead and adding the various procedures together to come up with a reasonable date. In reality, this date may be set back because of court actions or negotiations, but a reasonable date should nevertheless be established. If the state has not acted by that date, then the federal agency would have a legitimate basis for demanding that the state make its position known.

If the state wants more time to work out a consistency problem, it will request the same of the developing agency.

11. What if the developing agency wishes to make revisions in the proposed development?

If the federal agency proposing the development, as a result of the review process, revises its proposal substantially, the federal agency will notify DPED of any significant changes in the proposal.

III. CONSISTENCY OF FEDERAL ACTIVITIES

1. What is an activity?

The "activities" referred to in Sec. 307(c)(1) of the Coastal Zone Management Act are distinguished from "developments" in that the emphasis changes from construction to uses of the environment. Examples are plans, policies, environmental impact statements, and regulations which, though general in nature, will ultimately have a physical impact on the coastal zone. Activities include, but are not limited to, those which affect:

- Priority of uses
- Siting or placement of uses
- Design of uses
- Permissibility of uses
- Operation or conduct of new or existing uses when such operation would result in physical changes in the coastal zone such as air and water pollution, covering of water surface, removal of vegetation or new construction
- Disposition of land, or sale or lease of land to nonfederal entities

2. Who determines whether an activity directly affects the coastal resource and is consistent?

The federal agency makes this determination. To make this determination, and to provide for state consideration of these matters, the consistency duties of federal agencies in Hawaii's CZM Program are:

- a. To actually make the determination of consistency (state assistance is available);
- b. To notify the state in timely fashion of this determination through the A-95 or A-85, or directly; and
- c. To respond to any state requests for more information on the proposed activity.

3. How, specifically, does the federal agency make the determination?

The federal agency compares the activity to the policies, environment designations, and regulations of the CZM Program, guidelines and local programs. The activity should also be examined in light of water quality, air quality, and other pertinent state regulations.

If the substance of these policies and regulations is met by the activity, then the activity is consistent.

Should a federal agency encounter any unknowns or difficulty in learning whether its proposal complies, the agency should seek assistance from the DPED.

4. How, specifically, does the federal agency notify the state of its determination?

Probably the most convenient and timely way is to use the A-95 and A-85 systems as they now operate. In addition to the other A-95 and A-85 information, the federal agency should include whichever of the following four sentences it feels is appropriate:

- a. "The activity is not subject to the consistency requirements of Sec. 307 of the CZM Act of 1972."
- b. "This activity is consistent with the Hawaii CZM Program."
- c. "This activity is not consistent with the Hawaii CZM Program, but no practicable alternative exists to carry out the legal purpose for which the activity is designed."
- d. "This activity is not consistent with Hawaii CZM Program but no practicable alternative exists to meet the national security need filled by this activity."

The federal agency should also stipulate the date by which it plans to make a final decision on whether or not to proceed with the activity. Ongoing activities are seen as consistent for the present time, so this procedure is aimed at dealing with decisions to conduct new activities or alter existing activities.

A-95 and A-85 will provide the state with sufficient advance warning. The state can contact the federal agency directly, or rely on NEPA, if more information on the activity is needed.

5. What will the state do?

The state, acting through DPED will review the activity and in so doing will seek the views of other state agencies, local governments, and other appropriate sources. The nature of this review will depend on the type and magnitude of the federal activity.

If the state agrees with the federal assertion, that is, with whichever of the four consistency statements shown above that the federal agency used, then nothing more will be done.

If the state does not agree with the federal determination, formal notice will be sent to the federal agency and a meeting or meetings will be held to solve the problem.

6. What will the state do if the problem cannot be solved?

The CZM Act provides no explicit means of relief in this case so the state will:

- a. Drop the matter;
 - b. Bring the matter before a mediation forum involving all key parties (such an informal body to be established);
 - c. Seek the good offices of NOAA to seek accommodation; or,
 - d. Take the matter to federal court.
7. What will the state do if a federal agency starts an activity without making a consistency determination or notifying the state of such determination?

If the state should learn of a pending federal activity or of one already underway, (it usually will by virtue of NEPA, Federal Register, Section 10 Permit, citizen comment, or other means), and if the state believes this activity to be subject to Sec. 307(c)(1), then the state will immediately notify the federal agency of this situation and request a determination of consistency.

At the same time the state will undertake to make its own determination and if the activity is found to be consistent, the matter will end. If, however, the federal agency does not feel that the activity is subject to 307(c)(1), or disagrees with the state's determination, the matter will be taken up in meetings called for the purpose; or failing there, the state will resort to one of the options described above.

8. What if the state does nothing for awhile, and suddenly claims that a proposed activity is inconsistent at the last minute, or even after it has begun? Especially if the federal agency has lived up to its end by making and announcing its determination properly?

There is a time span between the moment the federal proposal (and consistency determination) is announced, and the time the federal agency actually decides to conduct the activity or not. The length of this time span depends on the various decision-making apparatuses involved, and the various federal administrative processes that come into play. At a minimum, the time span should be the time needed to complete the A-95 or A-85 processes. This could be lengthened by the NEPA process, Section 10, or others.

It is essential that a federal agency declare a final decision date when it announces its intentions to undertake an activity. This can be done by looking ahead and adding the various procedures together to come up with a reasonable date. In reality, this date may be set back because of court actions or negotiations, but a reasonable date should nevertheless be established. If the state has not acted by that date, then the federal agency would have a legitimate basis for demanding that the state make its position known.

9. What if the federal agency proposing the activity should desire to revise that activity?

If the federal agency proposing the activity, as a result of the review process, wishes to revise its activity substantially, the federal agency will notify DPED.

IV. CONSISTENCY OF FEDERAL PERMITS AND LICENSES

1. What permits and licenses are subject to the consistency requirement?

Authorizations subject to the consistency requirement of Sec. 307(c)(3) of the Coastal Zone Management Act include the following:

- Section 10 permits
- Section 404 permits
- Permit for mineral extraction and exploratory drilling
- Licenses for transportation devices, terminals and facilities (such as bridges over navigable water, air-ports, deepwater ports, anchorages and layups)
- NPDES permits
- Power plants and facilities

2. What if the issuing agency isn't sure if a permit or license is subject to the consistency requirement?

Check with the DPED for guidance.

3. Who "certifies" that permits and licenses are consistent?

No one.

The Act calls for the applicant to "certify." However, the applicant could not reasonably provide certification until all local and state permits have been acquired. Many applicants find it convenient to apply for local, state, and federal permits simultaneously. The state does not wish to introduce more time and essentially another permit system into the process.

Therefore, the state is abandoning the concept of certification in favor of a "declaration" of consistency.

4. If the applicant isn't charged with certification, how does the federal issuing agency know if a proposed project is consistent?

The state will, after review of an application for a license or permit, "declare" the proposal to be consistent with the state's coastal zone management program. This declaration will take the place of the certification mentioned in Sec. 307(c)(3). In some instances, the state may declare that the proposed project is not subject to the consistency requirement.

5. What form will the declaration take?

It will be in the form of a letter from DPED to the issuing agency stating that the applicant has met the state and local authorization requirements of the coastal zone management program.

6. What are the duties of the federal issuing agency?

When an applicant submits his application for a permit or license, the federal issuing agency should determine if the proposed project is subject to the 307(c)(3) requirement of the CZMA.

If the proposed project is of coastal zone relevance, the federal agency sends a copy of the application to DPED.

7. Some federal agencies already submit permit and license applications to the DPED for review. What is different under the coastal zone program?

There are two differences. First, the federal issuing agency should include in the transmittal of information a notation of coastal zone significance. Second, the federal agency should send the information to the federal coordinator in addition to the usual contact.

8. What are the duties of DPED?

DPED will seek efficient concurrent review of application through existing systems. DPED will also monitor the progress of the application insofar as state and local permit systems are involved. When all the required state and local permits have been acquired, DPED will send its "declaration" to the federal issuing agency.

9. What is the time frame involved in permit and license review?

The normal time frame for review of federal permits and licenses. The review period begins when DPED receives the application accompanied by the federal agency's notification of coastal zone relevance.

If state and local permit procedures are delayed through court action, delayed hearings, or negotiations, the time period may be extended. When DPED sees this possibility, it will inform the federal agency.

10. How long does the "declaration" of consistency by the state remain in effect?

For two years. It will then expire if a local shoreline permit was required and construction has not yet begun.

11. What if the state says a proposed action is inconsistent, and the applicant or the issuing federal agency disagrees?

Only action by the Secretary of Commerce or a court ruling can override the state's action.

12. What if the applicant wishes to revise the scope or intent of the permit or license?

If substantial revisions are proposed, the application must be resubmitted.